

House File 633

HOUSE FILE _____
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 266)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to cemeteries and cemetery regulation;
2 establishing requirements for interment rights agreements,
3 reporting, and permits; establishing and appropriating fees;
4 and providing administration and enforcement procedures and
5 penalties.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 1 Section 1. Section 6A.4, subsection 4, Code 2003, is
1 2 amended to read as follows:
1 3 4. CEMETERY ASSOCIATIONS CORPORATIONS. Upon any private
1 4 cemetery ~~or cemetery association corporation~~ which is
1 5 incorporated under the laws of this state relating to
1 6 corporations not for pecuniary profit, and having its cemetery
1 7 located outside the limits of a city, for the purpose of
1 8 acquiring necessary grounds for cemetery use or reasonable
1 9 additions thereto. The right granted in this subsection shall
1 10 not be exercised until the board of supervisors, of the county
1 11 in which the land sought to be condemned is located, has, on
1 12 written application and hearing, on such reasonable notice to
1 13 all interested parties as it may fix, found that the land,
1 14 describing it, sought to be condemned, is necessary for
1 15 cemetery purposes. The ~~association cemetery corporation~~ shall
1 16 pay all costs attending such hearing.

1 17 Sec. 2. Section 6A.7, Code 2003, is amended to read as
1 18 follows:

1 19 6A.7 CEMETERY LANDS.

1 20 No lands actually platted, used, and devoted to cemetery
1 21 purposes shall be taken for any railway purpose without the
1 22 consent of the ~~proper cemetery corporation's~~ officers or
1 23 owners thereof.

1 24 Sec. 3. Section 359.28, Code 2003, is amended to read as
1 25 follows:

1 26 359.28 CONDEMNATION.

1 27 The township trustees are hereby empowered to condemn, or
1 28 purchase and pay for out of the general fund, or the specific
1 29 fund voted for such purpose, and enter upon and take, any
1 30 lands within the territorial limits of such township for the
1 31 use of existing cemeteries, a community center or juvenile
1 32 playgrounds, in the same manner as is now provided for cities.
1 33 However, the board of supervisors or a cemetery commission
1 34 appointed by the board of supervisors shall control and
1 35 maintain pioneer cemeteries as defined in section 331.325.

2 1 Sec. 4. Section 359.29, Code 2003, is amended to read as
2 2 follows:

2 3 359.29 GIFTS AND DONATIONS.

2 4 Civil townships are hereby authorized and empowered to
2 5 receive by gift, devise, or bequest, money or property for the
2 6 purpose of establishing and maintaining libraries, township
2 7 halls, maintaining existing cemeteries, or for any other
2 8 public purpose. All such gifts, devises, or bequests shall be
2 9 effectual only when accepted by resolution of the board of
2 10 trustees of such township.

2 11 Sec. 5. Section 427.1, subsection 6, Code 2003, is amended
2 12 to read as follows:

2 13 6. PROPERTY OF CEMETERY ASSOCIATIONS CORPORATIONS. Burial
2 14 grounds, mausoleums, buildings and equipment owned and
2 15 operated by cemetery ~~associations corporations incorporated as~~
2 16 a nonprofit corporation under chapter 504A and used

2 17 exclusively for the maintenance and care of the cemeteries
2 18 devoted to interment of human bodies and human remains. The

2 19 exemption granted by this subsection shall not apply to any
2 20 property used for the practice of mortuary science.
2 21 Sec. 6. Section 450.10, subsection 3, unnumbered paragraph
2 22 1, Code 2003, is amended to read as follows:
2 23 When the property or any interest therein or income
2 24 therefrom, taxable under the provisions of this chapter,
2 25 passes in any manner to societies, institutions or
2 26 associations incorporated or organized under the laws of any
2 27 other state, territory, province or country than this state,
2 28 for charitable, educational or religious purposes, or to
2 29 cemetery ~~associations~~ corporations incorporated as a nonprofit
2 30 corporation under chapter 504A, including humane societies not
2 31 organized under the laws of this state, or to resident
2 32 trustees for uses without this state, the rate of tax imposed
2 33 shall be as follows:

2 34 Sec. 7. Section 459.102, subsection 9, Code 2003, is
2 35 amended to read as follows:

3 1 9. "Cemetery" means a space held for the purpose of
3 2 permanent burial, entombment, or interment of human remains
3 3 that is owned or managed by a political subdivision or private
3 4 entity, or a cemetery regulated pursuant to chapter 523I ~~or~~
3 5 ~~566A~~. However, "cemetery" does not include a pioneer cemetery
3 6 as defined in section 331.325.

3 7 Sec. 8. Section 523A.203, subsection 6, paragraph b, Code
3 8 2003, is amended to read as follows:

3 9 b. Use any funds required to be held in trust under this
3 10 chapter ~~or chapter 566A~~ to purchase an interest in any
3 11 contract or agreement to which a seller is a party.

3 12 SUBCHAPTER 1

3 13 SHORT TITLE AND DEFINITIONS

3 14 Sec. 9. NEW SECTION. 523I.101 SHORT TITLE.

3 15 This chapter may be cited as the "Iowa Cemetery Act".

3 16 Sec. 10. NEW SECTION. 523I.102 DEFINITIONS.

3 17 For purposes of this chapter, unless the context otherwise
3 18 requires:

3 19 1. "Authorized to do business within this state" means a
3 20 person licensed, registered, or subject to regulation by an
3 21 agency of the state of Iowa or who has filed a consent to
3 22 service of process with the commissioner for purposes of this
3 23 chapter.

3 24 2. "Burial site" means any area, except a cemetery, that
3 25 is used to inter or scatter remains.

3 26 3. "Capital gains" means appreciation in the value of
3 27 trust assets for which a market value may be determined with
3 28 reasonable certainty after deduction of investment losses,
3 29 taxes, expenses incurred in the sale of trust assets, any
3 30 costs of the operation of the trust, and any annual audit
3 31 fees.

3 32 4. "Care" means the maintenance of a cemetery's interment
3 33 spaces, niches, and mausoleums.

3 34 5. "Care fund" means money or real or personal property
3 35 impressed with a trust by the terms of this chapter, a gift,
4 1 grant, contribution, payment, legacy, or the terms of a
4 2 contract accepted by the cemetery corporation or any trustee
4 3 of the trust fund and any accumulated income allocated to
4 4 principal.

4 5 6. "Casket" means a rigid container which is designed for
4 6 the encasement of human remains and which is usually
4 7 constructed of wood, metal, fiberglass, plastic, or like
4 8 material and ornamented and lined with fabric.

4 9 7. "Cemetery" means an area dedicated to and used or
4 10 intended to be used to inter or scatter remains.

4 11 8. "Cemetery corporation" means a corporation that
4 12 operates one or more cemeteries.

4 13 9. "Columbarium" means a structure, room, or space in a
4 14 mausoleum or other building containing niches or recesses for
4 15 disposition of cremated remains.

4 16 10. "Commissioner" means the commissioner of insurance or
4 17 the deputy administrator authorized in section 523A.801 to the
4 18 extent the commissioner delegates functions to the deputy
4 19 administrator.

4 20 11. "Common business enterprise" means a group of two or
4 21 more business entities that share common ownership in excess
4 22 of fifty percent.

4 23 12. "Credit sale" means a sale of goods, services, or an
4 24 interest in land in which all of the following are applicable:

4 25 a. Credit is granted either under a seller credit card or
4 26 by a seller who regularly engages as a seller in credit
4 27 transactions of the same kind.

4 28 b. The buyer is a person other than an organization.

4 29 c. The goods, services, or interest in land are purchased

4 30 primarily for a personal, family, or household purpose.
4 31 d. Either the debt is payable in installments or a finance
4 32 charge is made.
4 33 e. For goods and services, the amount financed does not
4 34 exceed twenty-five thousand dollars.

4 35 13. "Disinterment" means to remove human remains from
5 1 their place of final disposition.
5 2 14. "Doing business in this state" means issuing or
5 3 performing wholly or in part any term of an interment rights
5 4 agreement executed within the state of Iowa.
5 5 15. "Financial institution" means a state or federally
5 6 insured bank, savings and loan association, credit union,
5 7 trust department thereof, or a trust company that is
5 8 authorized to do business within this state, that has been
5 9 granted trust powers under the laws of this state or the
5 10 United States, and that holds funds under a trust agreement.
5 11 "Financial institution" does not include a cemetery, a
5 12 cemetery corporation, or any person employed by or directly
5 13 involved with a cemetery.
5 14 16. "Garden" means an area within a cemetery established
5 15 by the cemetery as a subdivision for organizational purposes,
5 16 not for sale purposes.
5 17 17. "Grave space" means a space of ground in a cemetery
5 18 that is used or intended to be used for an in-ground burial.
5 19 18. "Gross selling price" means the aggregate amount a
5 20 purchaser is obligated to pay for interment rights, exclusive
5 21 of finance charges.
5 22 19. "Inactive cemetery" means a cemetery that is not
5 23 operating on a regular basis, is not offering to sell or
5 24 provide interments or other services reasonably necessary for
5 25 interment, and does not provide or permit reasonable ingress
5 26 or egress for the purposes of visiting interment spaces.
5 27 20. "Income" means the return in money or property derived
5 28 from the use of trust principal after deduction of investment
5 29 losses, taxes, and expenses incurred in the sale of trust
5 30 assets, any cost of the operation of the trust, and any annual
5 31 audit fees. "Income" includes but is not limited to:
5 32 a. Rent of real or personal property, including sums
5 33 received for cancellation or renewal of a lease and any
5 34 royalties.
5 35 b. Interest on money lent, including sums received as
6 1 consideration for prepayment of principal.
6 2 c. Cash dividends paid on corporate stock.
6 3 d. Interest paid on deposit funds or debt obligations.
6 4 e. Gain realized from the sale of trust assets.
6 5 21. "Insolvent" means the inability to pay debts as they
6 6 become due in the usual course of business.
6 7 22. "Interment rights" means the rights to place remains
6 8 in a specific location for use as a final resting place or
6 9 memorial.
6 10 23. "Interment rights agreement" means an agreement to
6 11 furnish memorials, memorialization, opening and closing
6 12 services, or interment rights.
6 13 24. "Interment space" means a space used or intended to be
6 14 used for the interment of remains including, but not limited
6 15 to, a grave space, lawn crypt, mausoleum crypt, and niche.
6 16 25. "Lawn crypt" means a preplaced enclosed chamber, which
6 17 is usually constructed of reinforced concrete and poured in
6 18 place, or a precast unit installed in quantity, either side=
6 19 by=side or at multiple depths, and covered by earth or sod.
6 20 26. "Lot" means an area in a cemetery containing more than
6 21 one interment space which is uniquely identified by an
6 22 alphabetical, numeric, or alphanumeric identification
6 23 system.
6 24 27. "Maintenance funds" means any money and real or
6 25 personal property held by a nonperpetual cemetery under the
6 26 terms of this chapter, and any accumulated income allocated to
6 27 principal.
6 28 28. "Mausoleum" means an aboveground structure designed
6 29 for the entombment of human remains.
6 30 29. "Mausoleum crypt" means a chamber in a mausoleum of
6 31 sufficient size to contain casketed human remains.
6 32 30. "Memorial" means any product, including any foundation
6 33 other than a mausoleum or columbarium, used for identifying an
6 34 interment space or for commemoration of the life, deeds, or
6 35 career of a decedent including, but not limited to, a
7 1 monument, marker, niche plate, urn garden plaque, crypt plate,
7 2 cenotaph, marker bench, and vase.
7 3 31. "Memorial care" means any care provided or to be
7 4 provided for the general maintenance of memorials including
7 5 foundation repair or replacement, resetting or straightening

7 6 tipped memorials, repairing or replacing inadvertently damaged
7 7 memorials and any other care clearly specified in the purchase
7 8 agreement.

7 9 32. "Memorial dealer" means any person offering or selling
7 10 memorials retail to the public.

7 11 33. "Memorialization" means any permanent system designed
7 12 to mark or record the names and other data pertaining to a
7 13 decedent.

7 14 34. "Merchandise" means any personal property offered or
7 15 sold for use in connection with the funeral, final
7 16 disposition, memorialization, or interment of human remains,
7 17 but which is exclusive of interment rights.

7 18 35. "Neglected cemetery" means a cemetery where there has
7 19 been a failure to cut grass or weeds or care for graves,
7 20 memorials or memorialization, walls, fences, driveways, and
7 21 buildings, or for which proper records of interments have not
7 22 been maintained.

7 23 36. "Niche" means a recess or space in a columbarium or
7 24 mausoleum used for placement of cremated human remains.

7 25 37. "Opening and closing services" means one or more
7 26 services necessarily or customarily provided in connection
7 27 with the interment or entombment of human remains or a
7 28 combination thereof.

7 29 38. "Outer burial container" means any container which is
7 30 designed for placement in the ground around a casket or an urn
7 31 including, but not limited to, containers commonly known as
7 32 burial vaults, urn vaults, grave boxes, grave liners, and lawn
7 33 crypts.

7 34 39. "Parent company" means a corporation that has a
7 35 controlling interest in a cemetery corporation.

8 1 40. "Perpetual care cemetery" includes all of the
8 2 following:

8 3 a. Any cemetery that was organized or commenced business
8 4 in this state on or after July 1, 1995.

8 5 b. Any cemetery that has established a care fund in
8 6 compliance with subchapter 12.

8 7 c. Any cemetery that represents that it is a perpetual
8 8 care cemetery in its interment rights agreement.

8 9 d. Any cemetery that represents in any other manner that
8 10 the cemetery provides perpetual, permanent, or guaranteed
8 11 care.

8 12 41. "Person" means an individual, firm, corporation,
8 13 partnership, joint venture, limited liability company,
8 14 association, trustee, government or governmental subdivision,
8 15 agency, or other entity, or any combination thereof.

8 16 42. "Pioneer cemetery" means a cemetery where there were
8 17 six or fewer burials in the preceding fifty years.

8 18 43. "Purchaser" means a person who purchases memorials,
8 19 memorialization, opening and closing services, scattering
8 20 services, interment rights, or a combination thereof. The
8 21 purchaser need not be a beneficiary of the interment rights
8 22 agreement.

8 23 44. "Religious cemetery" means a cemetery that is owned,
8 24 operated, or controlled by a recognized church or
8 25 denomination.

8 26 45. "Relocation" means the act of taking remains from the
8 27 place of interment or the place where the remains are being
8 28 held to another designated place.

8 29 46. "Remains" means the body of a deceased human or a body
8 30 part, or limb that has been removed from a living human,
8 31 including a body, body part, or limb in any stage of
8 32 decomposition, or cremated remains.

8 33 47. "Scattering services provider" means a person in the
8 34 business of scattering human cremated remains.

8 35 48. "Seller" means a person doing business within this
9 1 state, including a person doing business within this state who
9 2 advertises, sells, promotes, or offers to furnish memorials,
9 3 memorialization, opening and closing services, scattering
9 4 services or interment rights, or a combination thereof,
9 5 whether the transaction is completed or offered in person,
9 6 through the mail, over the telephone, by the internet, or
9 7 through any other means of commerce.

9 8 49. "Special care" means any care provided or to be
9 9 provided that supplements or exceeds the requirements of this
9 10 chapter in accordance with the specific directions of any
9 11 donor of funds for such purposes.

9 12 50. "Undeveloped space" means a designated area or
9 13 building within a cemetery that has been mapped and planned
9 14 for future development but is not yet fully developed.

9 15 SUBCHAPTER 2
9 16 CEMETERY DEDICATION REQUIREMENTS AND PROCEDURES

9 17 Sec. 11. NEW SECTION. 523I.201 DEDICATION.

9 18 1. A person that dedicates property for a new cemetery on
9 19 or after July 1, 2003, and a cemetery corporation that
9 20 dedicates an additional garden on or after July 1, 2003,
9 21 shall:

9 22 a. In the case of land, survey and subdivide the property
9 23 into gardens with descriptive names or numbers and make a map
9 24 or plat of the property. Individual spaces do not need to be
9 25 set forth visually. The map or plat must include narrative
9 26 descriptions for each garden that allow individuals to
9 27 determine the location of each interment space. The narrative
9 28 descriptions must include appropriate compass directions, the
9 29 size of interment spaces in each defined area, and a
9 30 description of a progressive numbering system used to organize
9 31 individual spaces in each defined area.

9 32 b. In the case of a mausoleum or a columbarium, make a map
9 33 or plat of the property delineating sections or other
9 34 divisions with descriptive names and numbers. Individual
9 35 spaces do not need to be set forth visually. The map or plat
10 1 must include narrative descriptions for each section or
10 2 division that allow individuals to determine the location of
10 3 each interment space. The narrative descriptions must include
10 4 appropriate compass directions, the size of interment spaces
10 5 in each defined area, and a description of a progressive
10 6 numbering system used to organize individual spaces in each
10 7 defined area.

10 8 c. File the map or plat with the commissioner, including a
10 9 written certificate or declaration of dedication of the
10 10 property delineated by the map or plat, dedicating the
10 11 property to cemetery purposes. The certificate or declaration
10 12 shall include all of the following:

10 13 (1) Provision of information on a form prescribed by the
10 14 directors or officers of the cemetery corporation.

10 15 (2) The signature of two individuals authorized by the
10 16 cemetery corporation for that purpose.

10 17 (3) Verification by a notary public.

10 18 2. A map or plat and a certificate or declaration of
10 19 dedication that is filed pursuant to this section dedicates
10 20 the property for cemetery purposes and constitutes
10 21 constructive notice of that dedication.

10 22 3. A certificate or declaration of dedication may contain
10 23 a provision permitting a cemetery corporation to resurvey and
10 24 change the shape and size of the property for which the
10 25 associated map or plat is filed if that change does not
10 26 disturb any interred remains. If a change is made, the
10 27 cemetery corporation shall file an amended map or plat and
10 28 shall indicate any change in a specific unique number assigned
10 29 to an interment space.

10 30 4. A cemetery corporation is civilly liable to the state
10 31 in an amount not to exceed one thousand dollars for each map
10 32 or plat that fails to meet the requirements of this section.

10 33 5. A cemetery corporation shall not sell or convey
10 34 interment rights in a section or garden until a map or plat
10 35 and a certificate or declaration of dedication, if required by
11 1 this section, is filed with the commissioner.

11 2 Sec. 12. NEW SECTION. 523I.202 EFFECT OF DEDICATION.

11 3 1. Property may be dedicated for use as a cemetery, and
11 4 the dedication is permitted out of respect for the dead, to
11 5 provide for the disposition of remains, and in fulfillment of
11 6 a duty to and for the benefit of the public.

11 7 2. Dedication of property as a cemetery and a property
11 8 owner's title to the exclusive interment rights are not
11 9 affected by the dissolution of the corporation owning the
11 10 cemetery, nonuse, alienation, encumbrance, or forced sale of
11 11 the property.

11 12 3. Dedication of property as a cemetery may not be
11 13 invalidated because of a violation of the law against
11 14 perpetuities or the law against the suspension of the power of
11 15 alienation of title to or use of property.

11 16 4. All property located on land dedicated as a cemetery,
11 17 including a road, alley, or walk in the cemetery:

11 18 a. Is exempt from public improvements assessments, fees,
11 19 and public taxation.

11 20 b. Shall not be sold on execution or applied in payment of
11 21 debts due from individual owners.

11 22 5. If human remains are not interred in a garden, the
11 23 dedication of that portion of the property as a cemetery may
11 24 be removed if notice is filed with the commissioner. Property
11 25 dedicated as a cemetery shall continue to be used for cemetery
11 26 purposes until the dedication is removed by filing notice with
11 27 the commissioner, by court order, or until maintenance of the

11 28 cemetery is enjoined or abated as a nuisance under section
11 29 523I.804.

11 30 Sec. 13. NEW SECTION. 523I.203 REMOVAL OF DEDICATION.

11 31 A cemetery corporation may petition a district court of the
11 32 county in which a cemetery is located to remove the dedication
11 33 with respect to all or any portion of the cemetery if any of
11 34 the following occurs:

11 35 1. All remains have been removed from that portion of the
12 1 cemetery where the dedication is to be removed.

12 2 2. No interments were made in that portion of the cemetery
12 3 where the dedication is to be removed and that portion of the
12 4 cemetery is not used or necessary for interment purposes.

12 5 3. A court orders the removal of the dedication upon
12 6 notice and proof deemed satisfactory by the court.

12 7 SUBCHAPTER 3

12 8 CEMETERY CORPORATIONS

12 9 Sec. 14. NEW SECTION. 523I.301 FORMATION OF CORPORATION
12 10 TO MAINTAIN AND OPERATE A CEMETERY.

12 11 1. A person shall not operate as a cemetery except by
12 12 means of a corporation.

12 13 2. A corporation may, if authorized to do so by its
12 14 articles, establish, maintain, manage, improve, or operate a
12 15 cemetery either for or without profit to its members or
12 16 stockholders. A nonprofit cemetery corporation shall be
12 17 organized pursuant to chapter 504A, the Iowa nonprofit
12 18 corporation Act. A for-profit cemetery corporation shall be
12 19 organized pursuant to chapter 490, the Iowa business
12 20 corporation Act, or chapter 490A, the Iowa limited liability
12 21 company Act.

12 22 3. The powers, privileges, and duties conferred and
12 23 imposed upon any cemetery corporation doing business under
12 24 this chapter are hereby enlarged as each particular case may
12 25 require to conform to the provisions of this chapter.

12 26 4. Unless otherwise limited by law, a cemetery corporation
12 27 shall have the same powers granted to other corporations in
12 28 general, including the right to enter into contracts secured
12 29 by a mortgage, deed of trust, or other obligation upon the
12 30 cemetery corporation's property.

12 31 Sec. 15. NEW SECTION. 523I.302 PROPERTY ACQUISITION BY
12 32 CEMETERY CORPORATION.

12 33 1. A cemetery corporation may acquire by purchase,
12 34 donation, or devise property consisting of land or other
12 35 property in which remains may be interred under law.

13 1 2. A cemetery corporation that acquires property may
13 2 record title to its property with the county recorder of the
13 3 county in which the property is located if its president and
13 4 secretary or other authorized delegate of the cemetery
13 5 corporation sign and acknowledge a declaration executed by the
13 6 cemetery corporation that describes the property and declares
13 7 the cemetery corporation's intention to use the property or a
13 8 part of the property for interment purposes.

13 9 3. Title recorded pursuant to subsection 2 constitutes
13 10 constructive notice as of the date of filing that the property
13 11 is intended to be used for interment.

13 12 4. A cemetery corporation may by condemnation acquire
13 13 property in which remains may be interred when the acquisition
13 14 of that property is for a public purpose.

13 15 Sec. 16. NEW SECTION. 523I.303 AUTHORITY OF CEMETERY
13 16 CORPORATION.

13 17 A cemetery corporation may do any of the following:

13 18 1. Divide the cemetery into interment spaces and
13 19 subdivisions for cemetery purposes.

13 20 2. Charge an assessment on cemetery property for the
13 21 purpose of general improvement and maintenance.

13 22 3. Take any action that is necessary to carry out the
13 23 cemetery's business purposes including those purposes that are
13 24 necessarily incidental to the final disposition of human
13 25 remains, including any of the following:

13 26 a. Convey property or other assets of the corporation.

13 27 b. Borrow money.

13 28 SUBCHAPTER 4

13 29 INTERMENT RIGHTS

13 30 Sec. 17. NEW SECTION. 523I.401 SALE OF INTERMENT RIGHTS.

13 31 1. A cemetery corporation may sell and convey exclusive
13 32 rights of interment in the cemetery under the following
13 33 conditions:

13 34 a. The sale or conveyance is allowed by the rules of the
13 35 cemetery and the restrictions in the certificate of interment
14 1 rights or other instrument of conveyance.

14 2 b. The purchase price for the interment rights has been
14 3 paid in full.

14 4 2. A certificate of interment rights or other instrument
14 5 evidencing the conveyance of exclusive rights of interment by
14 6 a cemetery corporation must be signed by the president or vice
14 7 president and the secretary or other officers authorized by
14 8 the cemetery corporation.

14 9 3. A conveyance of exclusive rights of interment must be
14 10 filed and recorded in the cemetery corporation's office. Any
14 11 transfer of the ownership of interment rights must be filed
14 12 and recorded in the cemetery corporation's office. The
14 13 cemetery corporation may charge a reasonable recording fee to
14 14 record the transfer of interment rights.

14 15 4. The interment rights in an interment space that is
14 16 conveyed by a certificate of ownership or other instrument
14 17 shall not be divided without the consent of the cemetery
14 18 corporation.

14 19 Sec. 18. NEW SECTION. 523I.402 INTERMENT RIGHTS.

14 20 1. An interment space in which exclusive rights of
14 21 interment are conveyed is presumed to be the separate property
14 22 of the person named as grantee in the certificate of interment
14 23 rights or other instrument of conveyance.

14 24 2. The spouse of a person to whom exclusive rights of
14 25 interment in an interment space are conveyed has a vested
14 26 right of interment of the spouse's remains in the interment
14 27 space while the spouse is married to the interment space owner
14 28 or if the spouse is married to the interment space owner at
14 29 the time of the owner's death.

14 30 Sec. 19. NEW SECTION. 523I.403 MULTIPLE OWNERS OF
14 31 INTERMENT RIGHTS.

14 32 Two or more owners of interment rights may designate a
14 33 person to represent the interment space and file notice of the
14 34 designation of a representative with the cemetery corporation.
14 35 If notice is not filed, the cemetery corporation may inter or
15 1 permit an interment in the space at the request or direction
15 2 of a registered co-owner of the interment space.

15 3 Sec. 20. NEW SECTION. 523I.404 RECORDS OF INTERMENT
15 4 RIGHTS AND INTERMENT.

15 5 1. A cemetery corporation shall keep complete records
15 6 identifying the owners of all interment rights sold by the
15 7 cemetery corporation and historical information regarding any
15 8 transfers of ownership. The records shall include all of the
15 9 following:

15 10 a. The name and last known address of each owner or
15 11 previous owner of interment rights.

15 12 b. The date of each purchase or transfer of interment
15 13 rights.

15 14 c. A unique numeric or alphanumeric identifier that
15 15 identifies the location of each interment space sold by the
15 16 cemetery corporation.

15 17 2. A cemetery corporation shall keep a record of each
15 18 interment in a cemetery. The records shall include all of the
15 19 following:

15 20 a. The date the remains are interred.

15 21 b. The name, date of birth, and date of death of the
15 22 decedent interred, if those facts can be conveniently
15 23 obtained.

15 24 c. A unique numeric or alphanumeric identifier that
15 25 identifies the location of the interment space where the
15 26 remains are interred.

15 27 Sec. 21. NEW SECTION. 523I.405 ABANDONED INTERMENT
15 28 SPACES.

15 29 1. REVERSION. The ownership or right in or to an
15 30 unoccupied interment space shall, upon abandonment, revert to
15 31 the cemetery corporation that owns the cemetery in which the
15 32 space is located.

15 33 2. PRESUMPTION OF ABANDONMENT. Unpaid care assessments
15 34 and fees for an unoccupied interment space not under perpetual
15 35 care shall create a lien by the cemetery corporation against
16 1 the applicable interment space. The continued failure of the
16 2 owner to maintain or care for an unoccupied interment space
16 3 not under perpetual care, for a period of ten years, or to pay
16 4 a lien for care assessments or care fees that exceed the
16 5 amount paid for the interment space, shall create the
16 6 presumption that the interment space has been abandoned. An
16 7 unused interment space under perpetual care in a lot which has
16 8 not had a burial for seventy-five years shall create a
16 9 presumption that the interment space has been abandoned.

16 10 3. NOTICE OF ABANDONMENT. Abandonment shall not be deemed
16 11 complete pursuant to subsection 2 until the cemetery
16 12 corporation gives notice declaring the interment space to be
16 13 abandoned, to the owner of record or, if the owner of record
16 14 is deceased or unknown, to the heirs of the owner of record.

16 15 4. SERVICE OF NOTICE. Notice of abandonment may be served
16 16 personally on the owner of record or the owner of record's
16 17 heirs, or may be served by mailing notice by certified mail to
16 18 the owner of record, or the owner of record's heirs, at the
16 19 last known address of the owner of record or owner of record's
16 20 heirs. If the address of the owner of record or the owner of
16 21 record's heirs cannot be ascertained, notice of such
16 22 abandonment shall be given by one publication of the notice of
16 23 abandonment in the official newspaper of the county in which
16 24 the cemetery is located.

16 25 5. OVERCOMING PRESUMPTION OF ABANDONMENT. If within one
16 26 year from the time of serving notice the owner of record or
16 27 the owner of record's heirs pay the past due annual care
16 28 charges assessed against the interment space, the presumption
16 29 of abandonment shall no longer exist and the owner of record
16 30 or the owner of record's heirs may be required to make full
16 31 payment for future perpetual care.

16 32 6. REVERSIONER'S RIGHT TO SELL. When the abandonment is
16 33 deemed complete, the reversionary owner of the abandoned
16 34 interment space, or a portion thereof, may sell and convey
16 35 title to the interment space.

17 1 7. USE OF FUNDS. Any funds realized from the sale of an
17 2 interment space not under perpetual care which has reverted to
17 3 the reversionary owner shall be allocated to the care fund or
17 4 to the fund paying the costs of cemetery operation.

17 5 8. ABANDONMENT == PERPETUAL CARE PROVIDED BY WILL, COURT
17 6 ORDER, CONTRACT, OR BY LAW. An unused interment space which
17 7 has not had a burial for seventy-five years, but whose
17 8 perpetual care has been provided for by will, court order,
17 9 contract, or by law, shall not be sold by the reversionary
17 10 owner until three years after the date notice was served on
17 11 the owner of record or the owner of record's heirs of the
17 12 presumed abandonment of the interment space.

17 13 SUBCHAPTER 5

17 14 INTERMENT RIGHTS AGREEMENTS

17 15 Sec. 22. NEW SECTION. 523I.501 STATEMENT BY PERPETUAL
17 16 CARE CEMETERY.

17 17 1. A perpetual care cemetery shall include the following
17 18 statement in the heading of each interment rights agreement:

17 19 "This cemetery is operated as a perpetual care cemetery,
17 20 which means that a care fund for its maintenance has been
17 21 established in conformity with the laws of the State of Iowa.
17 22 At least twenty percent of the purchase price for interment
17 23 rights must be placed in the care fund and the care fund's
17 24 income is used to maintain, repair, and care for the
17 25 cemetery."

17 26 2. If the care fund contains less than twenty-five
17 27 thousand dollars, the statement shall include a statement that
17 28 the balance of the care fund is less than twenty-five thousand
17 29 dollars or shall disclose the exact amount contained in the
17 30 care fund on a date not more than twelve months prior to the
17 31 date of execution of the interment rights agreement.

17 32 Sec. 23. NEW SECTION. 523I.502 STATEMENT BY NONPERPETUAL
17 33 CARE CEMETERY.

17 34 1. A nonperpetual care cemetery shall include the
17 35 following statement in the heading of each interment rights
18 1 agreement:

18 2 "This cemetery is a nonperpetual care cemetery and has not
18 3 established a perpetual trust fund for the cemetery's care."

18 4 2. A nonperpetual care cemetery shall not represent that
18 5 the cemetery is a perpetual care cemetery or use any similar
18 6 title, description, or term indicating that the cemetery
18 7 provides guaranteed or permanent maintenance and care. If a
18 8 nonperpetual care cemetery has a maintenance fund, trust fund,
18 9 or trust funds, any statements about those funds must be
18 10 factually accurate and explain any variances between the terms
18 11 of the applicable trust and this chapter in regard to the
18 12 twenty-five thousand dollar minimum corpus provision, any
18 13 provisions regarding invasion of principal, and the amount of
18 14 the purchase price placed in trust for each sale of interment
18 15 rights.

18 16 Sec. 24. NEW SECTION. 523I.503 INTERMENT RIGHTS
18 17 AGREEMENT REQUIREMENTS.

18 18 An agreement for interment rights shall be written in
18 19 clear, understandable language and shall contain all of the
18 20 following:

18 21 1. The name of the cemetery where the rights to interment
18 22 are located, the name of the cemetery corporation selling
18 23 interment rights or the name of a seller other than the
18 24 cemetery corporation, and the name of the purchaser.

18 25 2. The name and sales permit number of the salesperson.

18 26 3. A description of the interment rights to be provided
18 27 and the cost of merchandise or services to be provided.
18 28 4. The conditions under which substitutions will be
18 29 allowed.
18 30 5. The total purchase price and the terms under which the
18 31 purchase price is to be paid.
18 32 6. That the purchase of interment rights is an irrevocable
18 33 contract, except as otherwise specified in the cemetery
18 34 corporation's rules and regulations.
18 35 7. The amount or percentage of money to be placed in the
19 1 cemetery corporation's care fund or maintenance fund.
19 2 8. A statement explaining that the care fund or
19 3 maintenance fund is an irrevocable trust, that deposits cannot
19 4 be withdrawn even in the event of cancellation of the
19 5 agreement, and that the care fund or maintenance fund must be
19 6 used by the cemetery corporation for the care and maintenance
19 7 of the cemetery.
19 8 9. An explanation of any fees or expenses that may be
19 9 charged.
19 10 10. An explanation of whether the money to be placed in
19 11 the cemetery corporation's care fund or maintenance fund will
19 12 be deposited in trust upon payment in full or on an allocable
19 13 basis as payments are made.
19 14 11. An explanation of whether initial payments on
19 15 agreements for multiple items of merchandise or services, or
19 16 both, will be allocated first to the purchase of interment
19 17 rights. If such an allocation will be made, the agreement
19 18 shall provide for the immediate transfer of such interment
19 19 rights upon payment in full and prominently state that any
19 20 applicable trust deposits under chapter 523A will not be made
19 21 until the cemetery has received payment in full for the
19 22 interment rights. The transfer of interment rights in an
19 23 undeveloped space may be deferred until such space is ready
19 24 for burial.
19 25 12. A provision that if the transfer of an undeveloped
19 26 interment space will be deferred as set forth in subsection
19 27 11, there will be written acknowledgement when payment in full
19 28 is made, specification of a reasonable time period for
19 29 development of the space, a description of what happens in the
19 30 event of the purchaser's death prior to development of the
19 31 space, and immediate transfer of the interment rights when
19 32 development of the space is complete.
19 33 13. Specification of the purchaser's right to cancel the
19 34 agreement and liability for damages upon such cancellation, if
19 35 any.
20 1 14. A statement that the insurance division exercises
20 2 regulatory oversight over interment rights agreements set
20 3 forth in twelve point bold=faced type, in substantially the
20 4 following language: THIS AGREEMENT IS SUBJECT TO RULES
20 5 ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE
20 6 INSURANCE DIVISION AT (____)_____. WRITTEN INQUIRIES OR
20 7 COMPLAINTS SHOULD BE MAILED TO THE IOWA INSURANCE DIVISION,
20 8 (STREET ADDRESS), (CITY), IOWA (ZIP CODE).
20 9 15. If the cemetery corporation offers opening and closing
20 10 services, specification of whether opening and closing of
20 11 interment spaces are included in the interment rights
20 12 agreement, and, if not, the current prices for such opening
20 13 and closing services and a statement that these prices are
20 14 subject to change.
20 15 16. Signatures of the purchaser and the seller.
20 16 A seller shall furnish the purchaser with a completed copy
20 17 of the interment rights agreement at the time the agreement is
20 18 signed.

20 19 SUBCHAPTER 6

20 20 LAWN CRYPTS

20 21 Sec. 25. NEW SECTION. 523I.601 REQUIREMENTS FOR LAWN
20 22 CRYPTS.

20 23 A lawn crypt shall not be installed unless all of the
20 24 following apply:

20 25 1. The lawn crypt is constructed of concrete and
20 26 reinforced steel or other comparable durable material.

20 27 2. The lawn crypt is installed on not less than six inches
20 28 of rock, gravel, or other drainage material.

20 29 3. The lawn crypt provides a method to drain water out of
20 30 the lawn crypt.

20 31 4. The lawn crypt is capable of withstanding the weight of
20 32 the soil and sod above the top surface and the weight of
20 33 machinery and equipment normally used in the maintenance of
20 34 the cemetery.

20 35 5. Except as provided by section 523I.602, the lawn crypt
21 1 is installed in multiple units of ten or more.

21 2 6. The lawn crypt shall be installed in compliance with
21 3 any applicable law or rule adopted by the department of public
21 4 health.

21 5 Sec. 26. NEW SECTION. 523I.602 REQUEST TO INSTALL LAWN
21 6 CRYPT IN FEWER THAN TEN UNITS.

21 7 1. A lawn crypt may be installed in fewer than ten units
21 8 if it is installed in an interment space pursuant to a written
21 9 request to the commissioner signed by the owner or owners of
21 10 the interment space.

21 11 2. The written request shall be filed on a form prescribed
21 12 by the commissioner and shall contain substantially all of the
21 13 following information:

21 14 a. The owner's name and address.
21 15 b. The name of the cemetery and the owner of the cemetery.
21 16 c. The number of lawn crypt units to be installed.
21 17 d. A description of the interment spaces.
21 18 e. A statement that the lawn crypt meets the requirements

21 19 of section 523I.601, including all of the following:

21 20 (1) A statement that the lawn crypt will be constructed of
21 21 concrete and reinforced steel or other comparable durable
21 22 materials.

21 23 (2) A statement that the lawn crypt will be installed on
21 24 not less than six inches of rock, gravel, or other drainage
21 25 material.

21 26 (3) A statement that the lawn crypt will provide a method
21 27 to drain water out of the lawn crypt.

21 28 (4) A statement that the outside top surface of the lawn
21 29 crypt at the time of installation will be capable of
21 30 withstanding the weight of the soil and sod above the top
21 31 surface and the weight of machinery and equipment normally
21 32 used in the maintenance of the cemetery.

21 33 f. A statement that the space in which the lawn crypt is
21 34 to be installed is located in a garden.

21 35 g. The date on which the owner or owners signed the form.

22 1 Sec. 27. NEW SECTION. 523I.603 NEW CONSTRUCTION.

22 2 1. A person shall not offer to sell interment rights in a
22 3 mausoleum or columbarium that will be built or completed in
22 4 the future unless the person has submitted an application to
22 5 sell such interment rights with the commissioner on a form
22 6 prescribed by the commissioner and accompanied by a fee of one
22 7 hundred dollars.

22 8 2. The application to sell interment rights in a mausoleum
22 9 or columbarium must include the following information:

22 10 a. A description of the new facility or the proposed
22 11 expansion, including a description of the interment rights to
22 12 be offered to prospective purchasers.

22 13 b. A statement of the financial resources available for
22 14 the project.

22 15 c. A copy of the proposed interment rights agreement to be
22 16 used, which shall include the following:

22 17 (1) That purchase payments will be held in trust in
22 18 accordance with the requirements of chapter 523A until
22 19 construction of the mausoleum or columbarium is complete.

22 20 (2) That the purchaser may request a refund of the
22 21 purchase amount, if construction does not begin within five
22 22 years of the purchaser's first payment.

22 23 (3) That the new facility will operate as a perpetual care
22 24 cemetery in compliance with this chapter, even if the facility
22 25 is located at a nonperpetual care cemetery.

22 26 (4) That the purchaser will receive an ownership
22 27 certificate upon payment in full or, if later, when
22 28 construction is complete.

22 29 3. Unless financing has been secured that is adequate in
22 30 amount and terms to complete the facility proposed, new
22 31 construction of a mausoleum or columbarium shall not begin
22 32 until the application required by this section has been
22 33 approved by the commissioner.

22 34 SUBCHAPTER 7
22 35 PERMIT REQUIREMENTS

23 1 Sec. 28. NEW SECTION. 523I.701 CEMETERY PERMITS.

23 2 1. A cemetery corporation shall not advertise, sell,
23 3 promote, or offer to sell interment rights on or after July 1,
23 4 2003, without a permit as provided for in this subchapter. If
23 5 a cemetery corporation operates more than one cemetery, each
23 6 cemetery must have a cemetery permit.

23 7 2. A filing fee shall not be required.

23 8 3. An application for a cemetery permit shall be filed on
23 9 a form prescribed by the commissioner and include a copy of
23 10 each interment rights agreement form used by the cemetery.

23 11 4. The application shall contain all of the following:

23 12 a. The name and address of the cemetery.

23 13 b. The name and address of the cemetery corporation.
23 14 c. The name and address of each owner, officer, or other
23 15 official of the cemetery corporation, including, when
23 16 relevant, the chief executive officer and the members of the
23 17 board of directors.
23 18 d. A description of any common business enterprise or
23 19 parent company.
23 20 e. A list of the financial institutions used by the
23 21 cemetery corporation on a regular basis.
23 22 f. The name and address of any trustee holding trust funds
23 23 for the cemetery corporation, including the name and location
23 24 of the applicable trust account.

23 25 5. The commissioner shall grant or deny an application for
23 26 a cemetery permit within thirty days after receipt, but the
23 27 commissioner's failure to act within that time period shall
23 28 not be deemed approval of the application. If the
23 29 commissioner does not grant the permit, the commissioner shall
23 30 notify the person in writing of the reasons for denial.

23 31 6. A cemetery permit is valid for four years.

23 32 Sec. 29. NEW SECTION. 523I.702 SALES PERMITS.

23 33 1. A person shall not advertise, sell, promote, or offer
23 34 to sell interment rights without a sales permit. A person
23 35 holding a sales permit must be an employee or agent of a
24 1 cemetery corporation holding a cemetery permit. This section
24 2 shall not apply to a licensed funeral director who merely
24 3 collects cash advance payments for interment rights, an agent
24 4 or employee of a religious cemetery, or a cemetery owned or
24 5 operated by a political subdivision of this state.

24 6 2. A person must have a sales permit for each cemetery
24 7 corporation for which the person is employed or is an agent.

24 8 3. A cemetery corporation is liable for the acts of its
24 9 employees and agents performed in advertising, selling,
24 10 promoting, or offering to furnish interment rights.

24 11 4. An application for a sales permit shall be filed on a
24 12 form prescribed by the commissioner.

24 13 5. The application shall contain all of the following:
24 14 a. The name and address of the person.
24 15 b. The name and address of the cemetery and, if different,
24 16 the cemetery corporation on whose behalf the person will be
24 17 advertising, selling, promoting, or offering to furnish
24 18 interment rights.

24 19 6. A permit holder shall inform the commissioner of
24 20 changes in the information required to be provided by
24 21 subsection 5 in the initial application or in an application
24 22 for renewal within thirty days of the change.

24 23 7. An initial permit shall be accompanied by a five dollar
24 24 filing fee and shall expire one year from the date the
24 25 application is filed. The permit may be renewed for an
24 26 additional four years by filing the form prescribed by the
24 27 commissioner under this section, accompanied by a twenty
24 28 dollar filing fee.

24 29 8. The commissioner shall grant or deny a permit
24 30 application within thirty days after receipt, but the
24 31 commissioner's failure to act within that time period shall
24 32 not be deemed approval of the application. If the
24 33 commissioner does not grant the permit, the commissioner shall
24 34 notify the applicant in writing of the reasons for the denial.

24 35 9. The commissioner may, by rule, create or accept a
25 1 multijurisdiction sales permit. If the sales permit is issued
25 2 by another jurisdiction, the rules shall require the filing of
25 3 an application or notice form and payment of the applicable
25 4 filing fee of five dollars for each year. The application or
25 5 notice form utilized and the effective dates and terms of the
25 6 permit may vary from the provisions set forth in subsections
25 7 4, 5, 6, and 7.

25 8 10. The commissioner may create and accept a joint sales
25 9 permit for persons who are also required to hold a sales
25 10 permit under section 523A.502. Notwithstanding subsection 7
25 11 and section 523A.502, if a joint application is filed for both
25 12 sales permits, the fee for an initial joint permit shall be
25 13 five dollars and the fee for a renewed joint permit shall be
25 14 twenty dollars.

25 15 Sec. 30. NEW SECTION. 523I.703 DENIAL == SUSPENSION ==
25 16 REVOCATION == SURRENDER OF PERMITS.

25 17 1. The commissioner may, subject to chapter 17A, deny any
25 18 permit application or immediately suspend or revoke a permit
25 19 issued under this chapter for several reasons, including but
25 20 not limited to:

25 21 a. Committing a fraudulent act, engaging in a fraudulent
25 22 practice, or violating any provision of this chapter, or any
25 23 implementing rule or order issued under this chapter.

25 24 b. Violating any other state or federal law applicable to
25 25 the conduct of the applicant's or permit holder's business.
25 26 c. Insolvency or financial condition.
25 27 d. Engaging in a deceptive act or practice or
25 28 misrepresenting or omitting a material fact regarding the sale
25 29 of interment rights under this chapter.
25 30 e. Conviction of a criminal offense involving dishonesty
25 31 or a false statement.
25 32 f. Inability to provide the interment rights which the
25 33 applicant or permit holder purports to sell.
25 34 g. Selling the cemetery without filing a prior notice of
25 35 the sale with the commissioner. A cemetery permit shall be
26 1 revoked thirty days following such sale.
26 2 h. Allowing a person who is not an employee or agent of
26 3 the applicant or permit holder to sell interment rights.
26 4 i. Inadequate care and maintenance of the cemetery,
26 5 including but not limited to the following:
26 6 (1) Failure to adequately mow grass.
26 7 (2) Failure to adequately edge and trim bushes, trees, and
26 8 memorials.
26 9 (3) Failure to keep walkways and sidewalks free of
26 10 obstructions.
26 11 (4) Failure to adequately maintain the cemetery's
26 12 equipment and fixtures.
26 13 2. The commissioner may, for good cause shown, suspend any
26 14 permit for a period not exceeding thirty days, pending
26 15 investigation.
26 16 3. Except as provided in subsection 2, a permit shall not
26 17 be revoked or suspended except after notice and hearing under
26 18 chapter 17A.
26 19 4. Any permit holder may surrender a permit by delivering
26 20 to the commissioner written notice that the permit holder
26 21 surrenders the permit, but the surrender shall not affect the
26 22 permit holder's civil or criminal liability for acts committed
26 23 before the surrender.
26 24 5. Denial, revocation, suspension, or surrender of a
26 25 permit does not impair or affect the obligation of any
26 26 preexisting lawful agreement between the permit holder and any
26 27 person.

26 28 Sec. 31. NEW SECTION. 523I.704 ASSIGNMENTS AND TRANSFERS
26 29 PROHIBITED.
26 30 Permits issued pursuant to this chapter are not assignable
26 31 or transferable. This section does not apply to a religious
26 32 cemetery if it remains a religious cemetery after the
26 33 assignment or transfer of a permit.

26 34 Sec. 32. NEW SECTION. 523I.705 TRANSFER OF OWNERSHIP.
26 35 If an applicant or permit holder sells a cemetery, the
27 1 applicant or holder of a cemetery permit for that cemetery
27 2 shall notify the commissioner no later than thirty days after
27 3 the sale of the cemetery.

27 4 SUBCHAPTER 8 27 5 GENERAL PROVISIONS

27 6 Sec. 33. NEW SECTION. 523I.801 LIEN AGAINST CEMETERY
27 7 PROPERTY.

27 8 1. A cemetery corporation, by contract, may incur
27 9 indebtedness as necessary to conduct its business and may
27 10 secure the indebtedness by mortgage, deed of trust, or other
27 11 lien against its property.

27 12 2. A mortgage, deed of trust, or other lien placed on
27 13 dedicated cemetery property, or on cemetery property that is
27 14 later dedicated with the consent of the holder of the lien,
27 15 does not affect the dedication and is subject to the
27 16 dedication. A sale on foreclosure of the lien is subject to
27 17 the dedication of the property for cemetery purposes.

27 18 Sec. 34. NEW SECTION. 523I.803 REMOVAL OF REMAINS FROM
27 19 NEGLECTED CEMETERY.

27 20 1. If a neglected cemetery for which no care fund has been
27 21 regularly and legally established is abated as a nuisance, the
27 22 court abating the nuisance and enjoining its continuance or
27 23 the governing body of the municipality in which the cemetery
27 24 is located may authorize the removal of all human remains,
27 25 monuments, tombs, and other similar items from the cemetery to
27 26 another religious cemetery of the same denomination, if
27 27 applicable, or to a perpetual care cemetery in the same
27 28 county.

27 29 2. If a county does not have a perpetual care cemetery
27 30 that under its rules permits the interment of human remains
27 31 that have been removed from another cemetery, the human
27 32 remains, monuments, tombs, and other similar items may be
27 33 removed to a nonperpetual care cemetery in the county that has
27 34 provided for assessments for the cemetery's future care.

27 35 Sec. 35. NEW SECTION. 523I.804 NUISANCE == ABATEMENT ==
28 1 INJUNCTION.
28 2 1. A district court of the county in which a cemetery is
28 3 located may, by order, abate the cemetery as a nuisance and
28 4 enjoin its continuance if the cemetery is either:
28 5 a. Maintained, located, or used in violation of this
28 6 chapter.
28 7 b. Neglected so that it is offensive to the inhabitants of
28 8 the surrounding area.
28 9 2. A proceeding for abatement may be brought by the county
28 10 attorney, the attorney general, or the commissioner.
28 11 3. The court shall grant a permanent injunction against
28 12 each person responsible for the nuisance if a cemetery
28 13 nuisance exists or is threatened.
28 14 4. If a cemetery nuisance under subsection 1, paragraph
28 15 "b", is located in a municipality, the governing body of the
28 16 municipality may authorize the removal of all human remains,
28 17 monuments, tombs, or other similar items from the cemetery to
28 18 a perpetual care cemetery.

28 19 Sec. 36. NEW SECTION. 523I.805 RULEMAKING AND
28 20 ENFORCEMENT.
28 21 1. A cemetery corporation may adopt, amend, and enforce
28 22 rules for the use, care, control, management, restriction, and
28 23 protection of the cemetery, as necessary for the proper
28 24 conduct of the business of the cemetery, including, but not
28 25 limited to, the use, care, and transfer of any space or right
28 26 of interment.
28 27 2. A cemetery corporation may restrict and limit the use
28 28 of all property within the cemetery by rules that do all of
28 29 the following:
28 30 a. Prohibit the placement of memorials or memorialization,
28 31 buildings, or other types of structures within any portion of
28 32 the cemetery.
28 33 b. Regulate the uniformity, class, and kind of memorials
28 34 and memorialization and structures within the cemetery.
28 35 c. Regulate the scattering or placement of cremated
29 1 remains within the cemetery.
29 2 d. Prohibit or regulate the placement of nonhuman remains
29 3 within the cemetery.
29 4 e. Prohibit or regulate the introduction or care of trees,
29 5 shrubs, and other types of plants within the cemetery.
29 6 f. Regulate the right of third parties to open, prepare
29 7 for interment, and close interment spaces.
29 8 g. Prohibit interment in any part of the cemetery not
29 9 designated as an interment space.
29 10 h. Prevent the use of space for any purpose inconsistent
29 11 with the use of the property as a cemetery.
29 12 3. A cemetery corporation shall not adopt or enforce a
29 13 rule that prohibits interment because of the race, color, or
29 14 national origin of a decedent. A provision of a contract or a
29 15 certificate of ownership or other instrument conveying
29 16 interment rights that prohibits interment in a cemetery
29 17 because of the race, color, or national origin of a decedent
29 18 is void.
29 19 4. A cemetery corporation's rules shall be plainly printed
29 20 or typewritten and maintained for inspection in the office of
29 21 the cemetery or, if the cemetery does not have an office, in
29 22 another suitable place within the cemetery. The cemetery's
29 23 rules shall be provided to owners of interment spaces upon
29 24 request.
29 25 5. A cemetery corporation's rules shall specify the
29 26 cemetery corporation's obligations in the event that memorials
29 27 or memorialization are damaged or defaced by acts of
29 28 vandalism. The rules may specify a multiyear restoration of a
29 29 memorial or memorialization when the damage is extensive or
29 30 when money available from the cemetery's trust fund is
29 31 inadequate to complete repairs immediately. The owner of a
29 32 memorial or memorialization that has been damaged or defaced
29 33 shall be notified by the cemetery corporation by restricted
29 34 certified mail at the owner's last known address within sixty
29 35 days of the discovery of the damage or defacement. The rules
30 1 shall specify whether the owner is liable, in whole or in
30 2 part, for the cost to repair or replace a damaged or defaced
30 3 memorial or memorialization.
30 4 6. The cemetery corporation shall not approve any bylaw
30 5 which unreasonably restricts competition, or which
30 6 unreasonably increases the cost to the owner of interment
30 7 rights in utilizing these rights.

30 8 Sec. 37. NEW SECTION. 523I.806 PROTECTION OF CEMETERIES
30 9 AND BURIAL SITES.
30 10 1. EXISTENCE OF CEMETERY OR BURIAL SITE == NOTIFICATION.

30 11 If a governmental subdivision or agency is notified of the
30 12 existence of a cemetery, or a marked burial site that is not
30 13 located in a dedicated cemetery, within its jurisdiction and
30 14 the cemetery or burial site is not otherwise provided for
30 15 under this chapter, the governmental subdivision or agency
30 16 shall, as soon as is practicable, notify the owner of the land
30 17 upon which the cemetery or burial site is located of the
30 18 cemetery's or burial site's existence and location. The
30 19 notification shall include an explanation of the provisions of
30 20 this section. If there is a basis to believe that interment
30 21 may have occurred more than one hundred fifty years earlier,
30 22 the governmental subdivision or agency shall also notify the
30 23 state archaeologist.

30 24 2. DISTURBANCE OF INTERMENT SPACES == PENALTY. A person
30 25 who knowingly and without authorization damages, defaces,
30 26 destroys, or otherwise disturbs an interment space commits
30 27 criminal mischief in the third degree. Criminal mischief in
30 28 the third degree is an aggravated misdemeanor.

30 29 3. DUTY TO PRESERVE AND PROTECT. A governmental
30 30 subdivision or agency having a cemetery, or a burial site that
30 31 is not located within a dedicated cemetery, within its
30 32 jurisdiction, for which preservation is not otherwise
30 33 provided, shall preserve and protect the cemetery or burial
30 34 site as necessary to restore or maintain its physical
30 35 integrity as a cemetery or burial site. The governmental
31 1 subdivision or agency may enter into an agreement to delegate
31 2 the responsibility for the preservation and protection of the
31 3 cemetery or burial site to a person interested in historical
31 4 preservation. A cemetery corporation shall be formed to
31 5 operate the cemetery, if applicable.

31 6 4. CONFISCATION AND RETURN OF MEMORIALS. A law
31 7 enforcement officer having reason to believe that a memorial
31 8 or memorialization is in the possession of a person without
31 9 authorization or right to possess the memorial or
31 10 memorialization may take possession of the memorial or
31 11 memorialization from that person and turn it over to the
31 12 officer's law enforcement agency. If a law enforcement agency
31 13 determines that a memorial or memorialization the agency has
31 14 taken possession of rightfully belongs on an interment space,
31 15 the agency shall return the memorial or memorialization to the
31 16 interment space, or make arrangements with the person having
31 17 jurisdiction over the interment space for its return.

31 18 5. INTERMENT SPACES LOCATED ON PRIVATE PROPERTY.
31 19 a. A person shall notify a governmental subdivision or
31 20 agency if an interment of the person's ancestor exists on
31 21 property owned by another person within the jurisdiction of
31 22 the governmental subdivision or agency. The owner of the
31 23 property shall be notified by the governmental subdivision or
31 24 agency that the interment exists and that the owner must
31 25 permit the person reasonable ingress and egress for the
31 26 purposes of visiting the interment space of the person's
31 27 ancestor.

31 28 b. Pursuant to section 558.69, a declaration of value
31 29 submitted to a county recorder pursuant to chapter 428A shall
31 30 also include information concerning the existence of any known
31 31 private interment space situated on the property.

31 32 6. DISCOVERY OF HUMAN REMAINS. Any person discovering
31 33 human remains shall notify the county or state medical
31 34 examiner or a city, county, or state law enforcement agency as
31 35 soon as is reasonably possible unless the person knows or has
32 1 good reason to believe that such notice has already been given
32 2 or the discovery occurs in a cemetery. If there is reason to
32 3 believe that interment may have occurred more than one hundred
32 4 fifty years earlier, the governmental subdivision or agency
32 5 notified shall also notify the state archaeologist. A person
32 6 who does not provide notice required pursuant to this
32 7 subsection commits a serious misdemeanor.

32 8 Sec. 38. NEW SECTION. 523I.808 COMPLIANCE WITH IOWA
32 9 CONSUMER CREDIT CODE.

32 10 A seller of credit sales agreements pursuant to this
32 11 chapter shall comply with the requirements of chapter 537, and
32 12 is subject to the remedies and penalties provided for in that
32 13 chapter.

32 14 Sec. 39. NEW SECTION. 523I.809 DISCLOSURE REQUIREMENTS.

32 15 1. A cemetery corporation shall disclose, prior to the
32 16 sale of interment rights, whether opening and closing of the
32 17 interment space is included in the purchase of the interment
32 18 rights. If opening and closing services are not included in
32 19 the sale and the cemetery corporation offers opening and
32 20 closing services, the cemetery corporation must disclose that
32 21 the price for this service is subject to change and disclose

32 22 the current prices for opening and closing services provided
32 23 by the cemetery corporation.

32 24 2. The cemetery corporation shall fully disclose all fees
32 25 required for interment, entombment, or inurnment of human
32 26 remains.

32 27 3. A person owning interment rights may sell those rights
32 28 to third parties. The cemetery corporation shall fully
32 29 disclose, in the cemetery corporation's rules, any
32 30 requirements necessary to transfer title of interment rights
32 31 to a third party.

32 32 Sec. 40. NEW SECTION. 523I.810 INSTALLATION OF OUTER
32 33 BURIAL CONTAINERS.

32 34 A cemetery corporation shall provide services necessary for
32 35 the installation of outer burial containers or other similar
33 1 merchandise sold by the cemetery corporation. This section
33 2 shall not require the cemetery corporation to provide for
33 3 opening and closing of interment or entombment space, unless
33 4 an agreement executed by the cemetery corporation expressly
33 5 provides otherwise.

33 6 Sec. 41. NEW SECTION. 523I.811 ACCESS BY FUNERAL
33 7 DIRECTORS.

33 8 A licensed funeral director shall not be denied access by a
33 9 cemetery corporation to conduct a funeral for or to supervise
33 10 interment or disinterment of human remains.

33 11 Sec. 42. NEW SECTION. 523I.812 COUNTY AUDITOR AS
33 12 TRUSTEE.

33 13 1. In the absence of a trustee for care funds, unless
33 14 otherwise provided by law, the care funds shall be placed in
33 15 the hands of the county auditor, who shall receipt for, loan,
33 16 and make annual reports of the care funds.

33 17 2. The county auditor shall not be required to post a
33 18 bond.

33 19 3. The county auditor shall serve without compensation,
33 20 but may, out of the income received, pay all proper items of
33 21 expense incurred in the performance of the auditor's duties as
33 22 trustee, if any.

33 23 4. The county auditor shall make a full report of the
33 24 trustee's actions and trust funds annually in January. The
33 25 net proceeds for care funds received by the county auditor as
33 26 trustee shall be apportioned and credited to each of any
33 27 separate care funds assigned to the auditor.

33 28 5. The county auditor shall turn over the accrued income
33 29 from each care fund annually to the person having control of
33 30 the cemetery.

33 31 Sec. 43. NEW SECTION. 523I.813 MEMORIALS AND
33 32 MEMORIALIZATION.

33 33 1. AUTHORIZATION. A cemetery corporation is entitled to
33 34 determine whether that a person requesting installation of a
33 35 memorial is authorized to do so, to the extent that this can
34 1 be determined from the records of the cemetery corporation, as
34 2 is consistent with the cemetery corporation's rules. The
34 3 owner of an interment space or the owner's agent may authorize
34 4 a memorial dealer or independent third party to perform all
34 5 necessary work related to preparation and installation of a
34 6 memorial.

34 7 2. CONFORMITY WITH CEMETERY CORPORATION RULES. A person
34 8 selling a memorial shall review the rules of the cemetery
34 9 corporation for the cemetery where the memorial is to be
34 10 installed to ensure that the memorial will comply with those
34 11 rules prior to ordering or manufacturing the memorial.

34 12 3. SPECIFICATIONS. Upon request, a cemetery corporation
34 13 shall provide reasonable written specifications and
34 14 instructions governing installation of memorials, which shall
34 15 apply to all installations whether performed by the cemetery
34 16 corporation or another person. The written specifications
34 17 shall include provisions governing hours of installation or
34 18 any other relevant administrative requirements of the
34 19 cemetery. A copy of these specifications and instructions
34 20 shall be provided upon request, without charge, to the owner
34 21 of the interment space, next of kin, or a personal
34 22 representative or agent of the owner, including the person
34 23 installing the memorial. The person installing the memorial
34 24 shall comply with the cemetery corporation's written
34 25 installation specifications and instructions. A cemetery
34 26 corporation shall not adopt or enforce any rule prohibiting
34 27 the installation of a memorial by a memorial dealer or
34 28 independent third party, unless the rule is adopted and
34 29 enforced uniformly for all memorials installed in the
34 30 cemetery.

34 31 4. WRITTEN NOTICE. A memorial dealer or independent third
34 32 party shall provide the cemetery corporation with at least

34 33 seven days' prior written notice of intent to install a
34 34 memorial at the cemetery, or such lesser notice as the
34 35 cemetery corporation deems acceptable. The notice shall
35 1 contain the full name, address, and relationship of the
35 2 memorial's purchaser to the person interred in the interment
35 3 space or the owner of the interment space, if different. The
35 4 notice shall also contain the color, type, and size of the
35 5 memorial, the material, the inscription, and the full name and
35 6 interment date of the person interred in the interment space.

35 7 5. PREPARATION AND INSTALLATION.

35 8 a. A person installing a memorial shall be responsible to
35 9 the cemetery corporation for any damage caused to the cemetery
35 10 grounds, including roadways, other than normal use during
35 11 installation of the memorial.

35 12 b. Installation work shall cease during any nearby funeral
35 13 procession or committal service.

35 14 c. Installation work shall be done during the cemetery's
35 15 normal weekday hours or at such other times as may be arranged
35 16 with the cemetery corporation.

35 17 d. A memorial must comply with the cemetery corporation's
35 18 rules and regulations for the cemetery. In the event of
35 19 noncompliance, the person installing a memorial is responsible
35 20 for removal of the memorial and shall pay any reasonable
35 21 expenses incurred by the cemetery in connection with the
35 22 memorial's removal.

35 23 e. The cemetery corporation shall, without charge, provide
35 24 information as described on the cemetery's map or plat
35 25 necessary to locate the place where a memorial is to be
35 26 installed and any other essential information the person
35 27 installing the memorial needs to locate the proper interment
35 28 space.

35 29 f. A person installing a memorial shall follow the
35 30 cemetery corporation's instructions regarding the positioning
35 31 of the memorial.

35 32 g. During the excavation, all sod and dirt shall be
35 33 carefully removed with no sod or dirt left on the interment
35 34 space except the amount needed to fill the space between the
35 35 memorial and the adjacent lawn.

36 1 h. A person installing a memorial shall carefully fill in
36 2 any areas around the memorial with topsoil or sand, in
36 3 accordance with the cemetery corporation's written
36 4 instructions.

36 5 i. A person installing a memorial shall remove all
36 6 equipment and any debris which has accumulated during
36 7 installation of the memorial.

36 8 j. A person installing a memorial shall check to see if
36 9 any adjacent memorials have become soiled or dirty during
36 10 installation of the memorial and, if so, clean the adjacent
36 11 memorials.

36 12 k. If the person who is installing a memorial damages any
36 13 cemetery property, the person shall notify the cemetery
36 14 corporation immediately. The person installing the memorial
36 15 shall then repair the damage as soon as possible, upon
36 16 approval by the cemetery corporation. The cemetery
36 17 corporation may require a person installing a memorial to
36 18 provide current proof of workers' compensation insurance as
36 19 required by state law and current proof of liability
36 20 insurance, sufficient to indemnify the cemetery corporation
36 21 against claims resulting from installation of the memorial.
36 22 Proof of liability insurance in an amount of one million
36 23 dollars or more shall preclude the cemetery corporation from
36 24 requiring a person installing a memorial to obtain a
36 25 performance bond.

36 26 l. If a cemetery has an office, a person installing a
36 27 memorial shall immediately leave notice at the cemetery office
36 28 when the memorial has been installed and all work related to
36 29 the installation is complete.

36 30 6. INSPECTION. A cemetery corporation may inspect the
36 31 installation site of a memorial at any time. If the cemetery
36 32 corporation determines that cemetery corporation rules are not
36 33 being followed during the installation, the cemetery
36 34 corporation may order the installation to stop until the
36 35 infraction is corrected. The cemetery corporation shall
37 1 provide written notice to the installer within seven days if
37 2 the cemetery corporation believes that any of the following
37 3 have occurred:

37 4 a. The memorial has not been installed correctly.

37 5 b. The person installing the memorial has damaged property
37 6 at the cemetery.

37 7 c. Other cemetery corporation requirements for
37 8 installation have not been met, such as removal of debris or

37 9 equipment.
37 10 7. LOCATION AND SERVICE CHARGE. A cemetery corporation
37 11 may charge a reasonable service charge for allowing the
37 12 installation of a memorial purchased or obtained from and
37 13 installed by a person other than the cemetery corporation or
37 14 its agents. This service charge shall be based on the
37 15 cemetery corporation's actual labor costs, including fringe
37 16 benefits, of those employees whose normal duty is to inspect
37 17 the installation of memorials, in accordance with generally
37 18 accepted accounting practices. General administrative and
37 19 overhead costs and any other functions not related to actual
37 20 inspection time shall be excluded from the service charge.
37 21 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or
37 22 becomes misaligned within twelve months of its installation
37 23 and the cemetery corporation believes the cause is faulty
37 24 installation, the cemetery corporation shall notify the person
37 25 who installed the memorial in writing and the person who
37 26 installed the memorial shall be responsible to correct the
37 27 damage, unless the damage is caused by inadequate written
37 28 specifications and instructions from the cemetery corporation
37 29 or acts of the cemetery corporation and its agents or
37 30 employees, including but not limited to running a backhoe over
37 31 the memorial, carrying a vault or other heavy equipment over
37 32 the memorial, or opening or closing an interment space
37 33 adjacent to the memorial.
37 34 9. PERPETUAL CARE. A cemetery corporation may require
37 35 contributions from the purchaser of a memorial for perpetual
38 1 care, if a perpetual care fund deposit is uniformly charged on
38 2 every memorial installed in the cemetery.
38 3 Sec. 44. NEW SECTION. 523I.814 INTERMENT, RELOCATION, OR
38 4 DISINTERMENT OF REMAINS.
38 5 1. Unless a decedent has left directions in writing for
38 6 the disposition of the decedent's remains as provided in
38 7 subsection 2, the following persons, in the priority listed,
38 8 shall have the right to control the interment, relocation, or
38 9 disinterment of the decedent's remains within or from a
38 10 cemetery:
38 11 a. The person designated in a written instrument signed by
38 12 the decedent.
38 13 b. The surviving spouse of the decedent.
38 14 c. A surviving adult child of the decedent.
38 15 d. A surviving parent of the decedent.
38 16 e. A surviving adult sibling of the decedent.
38 17 f. Any adult person in the next degree of kinship in the
38 18 order named by law to inherit the estate of the decedent under
38 19 the rules of inheritance for intestate succession.
38 20 2. The written instrument referred to in subsection 1,
38 21 paragraph "a", shall be in substantially the following form:
38 22 DIRECTIONS FOR DISPOSITION OF MY REMAINS
38 23 Name of person whose remains are to be disposed of as
38 24 directed (decedent):
38 25 Address:
38 26 Telephone Number:
38 27 Acceptance of Appointment: (signature of agent)
38 28 Date of Signature:
38 29 SUCCESSORS
38 30 If my agent dies, becomes legally disabled, resigns, or
38 31 refuses to act, I hereby appoint the following persons (each
38 32 to act alone and successively, in the order named) to serve as
38 33 my agent (attorney-in-fact) to control the disposition of my
38 34 remains as authorized by this document:
38 35 First Successor
39 1 Name:
39 2 Address:
39 3 Telephone Number:
39 4 Acceptance of Appointment: (signature of first successor)
39 5 Date of Signature:
39 6 Second Successor
39 7 Name:
39 8 Address:
39 9 Telephone Number:
39 10 Acceptance of Appointment: (signature of second successor)
39 11 Date of Signature:
39 12 DURATION
39 13 This appointment becomes effective upon my death.
39 14 PRIOR APPOINTMENTS REVOKED
39 15 I hereby revoke any prior appointment of any person to
39 16 control the disposition of my remains.
39 17 RELIANCE
39 18 I hereby agree that any cemetery corporation that receives
39 19 a copy of this document may act under it. Any modification or

39 20 revocation of this document is not effective as to any such
39 21 party until that party receives actual notice of the
39 22 modification or revocation. No such party shall be liable
39 23 because of reliance on a copy of this document.

39 24 ASSUMPTION

39 25 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS
39 26 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND
39 27 BY THE PROVISIONS OF, SECTION 523I.814. Signed this ____ day
39 28 of _____, _____.

39 29 3. A written instrument referred to in subsection 1,
39 30 paragraph "a", is legally sufficient if the wording of the
39 31 instrument complies substantially with subsection 2, the
39 32 instrument is properly completed, the instrument is signed by
39 33 the decedent, the agent, and each successor agent, and the
39 34 signature of the decedent is acknowledged. Such written
39 35 instrument may be modified or revoked only by a subsequent
40 1 written instrument that complies with the requirements of this
40 2 subsection.

40 3 4. A person who represents that the person knows the
40 4 identity of a decedent and, in order to procure the interment,
40 5 relocation, or disinterment of the decedent's remains, signs
40 6 an order or statement, other than a death certificate, that
40 7 warrants the identity of the decedent is liable for all
40 8 damages that result, directly or indirectly, from that
40 9 representation.

40 10 5. A person may provide written directions for the
40 11 interment, relocation, or disinterment of the person's own
40 12 remains in a will, prepaid funeral or cemetery contract, or
40 13 written instrument signed and acknowledged by the person. The
40 14 directions may govern the inscription to be placed on a grave
40 15 marker attached to any interment space in which the decedent
40 16 had the right of interment at the time of death and in which
40 17 interment space the decedent is subsequently interred. The
40 18 directions may be modified or revoked only by a subsequent
40 19 writing signed and acknowledged by the person. A person other
40 20 than a decedent who is entitled to control the interment,
40 21 relocation, or disinterment of a decedent's remains under this
40 22 section shall faithfully carry out the directions of the
40 23 decedent to the extent that the decedent's estate or the
40 24 person controlling the interment, relocation, or disinterment
40 25 is financially able to do so.

40 26 6. If the decedent's directions for the interment of the
40 27 decedent's remains are in a will, the directions shall be
40 28 carried out immediately without the necessity of probate. If
40 29 a will is not probated or is declared invalid for testamentary
40 30 purposes, the directions for the interment of the decedent's
40 31 remains are valid to the extent that they have been acted upon
40 32 in good faith.

40 33 7. A cemetery corporation shall not be liable for carrying
40 34 out the written directions of a decedent or the directions of
40 35 any person entitled to control the interment, relocation, or
41 1 disinterment of the decedent's remains.

41 2 8. A dispute among any of the persons listed in subsection
41 3 1 concerning their right to control the interment, relocation,
41 4 or disinterment of a decedent's remains may be resolved by a
41 5 court of competent jurisdiction. A cemetery corporation shall
41 6 not be liable for refusing to accept the decedent's remains,
41 7 relocate or disinter, inter or otherwise dispose of the
41 8 decedent's remains, until the cemetery corporation receives a
41 9 court order or other suitable confirmation that the dispute
41 10 has been resolved or settled.

41 11 9. a. If good cause exists to relocate or disinter
41 12 remains interred in a cemetery, the remains may be removed
41 13 from the cemetery pursuant to a disinterment permit as
41 14 required under section 144.34, with the written consent of the
41 15 cemetery corporation, the current interment rights owner and
41 16 the person entitled by this section to control the interment,
41 17 relocation, or disinterment of the decedent's remains.

41 18 b. If the consent required by this subsection cannot be
41 19 obtained, the remains may be relocated by permission of the
41 20 district court of the county in which the cemetery is located.
41 21 Before the date of application to the court for permission to
41 22 relocate remains under this subsection, notice must be given
41 23 to the cemetery corporation that operates the cemetery in
41 24 which the remains are interred, each person whose consent is
41 25 required for relocation of the remains under subsection 1, and
41 26 any other person that the court requires to be served.

41 27 c. For the purposes of this subsection, personal notice
41 28 must be given not later than the eleventh day before the date
41 29 of application to the court for permission to relocate the
41 30 remains, or notice by certified mail or restricted certified

41 31 mail must be given not later than the sixteenth day before the
41 32 date of application.

41 33 d. This subsection does not apply to the removal of
41 34 remains from one interment space to another interment space in
41 35 the same cemetery to correct an error, or relocation of the
42 1 remains by the cemetery from an interment space for which the
42 2 purchase price is past due and unpaid, to another suitable
42 3 interment space.

42 4 10. A person who removes remains from a cemetery shall
42 5 keep a record of the removal, and provide a copy to the
42 6 cemetery, that includes all of the following:

42 7 a. The date the remains are removed.

42 8 b. The name of the decedent and age at death if those
42 9 facts can be conveniently obtained.

42 10 c. The place to which the remains are removed.

42 11 d. The name of the cemetery and the location of the
42 12 interment space from which the remains are removed.

42 13 11. A cemetery corporation may disinter and relocate
42 14 remains interred in the cemetery for the purpose of correcting
42 15 an error made by the cemetery corporation after obtaining a
42 16 disinterment permit as required by section 144.34. The
42 17 cemetery corporation shall provide written notice to the
42 18 commissioner and to the person by restricted certified mail
42 19 describing who has the right to control the interment,
42 20 relocation, or disinterment of the remains erroneously
42 21 interred, at the person's last known address and sixty days
42 22 prior to the disinterment. The notice shall include the
42 23 location where the disinterment will occur and the location of
42 24 the new interment space. A cemetery corporation is not
42 25 civilly or criminally liable for an erroneously made interment
42 26 that is corrected in compliance with this subsection unless
42 27 the error was the result of gross negligence or intentional
42 28 misconduct.

42 29 12. Relocations and disinterments of human remains shall
42 30 be done in compliance with sections 144.32 and 144.34.

42 31 Sec. 45. NEW SECTION. 523I.815 FEE AND CARE ASSESSMENTS
42 32 AND MAINTENANCE FUNDS AT NONPERPETUAL CARE CEMETERIES.

42 33 1. a. On or after July 1, 2003, a cemetery corporation
42 34 that operates a nonperpetual care cemetery shall, prior to
42 35 selling any interment rights, establish a maintenance fund to
43 1 provide funding for the maintenance of the cemetery.
43 2 Maintenance fund income shall be applied in the manner the
43 3 directors of the cemetery corporation determine is in the best
43 4 interests of the cemetery, provided that, maintenance fund
43 5 income shall be used only for the care described in a
43 6 resolution, bylaw, or other action or instrument establishing
43 7 the maintenance fund, including the general care and
43 8 maintenance of memorials, memorialization, and the cemetery.
43 9 Maintenance fund income may be used for any of the following
43 10 purposes:

43 11 (1) Cutting and trimming lawns, shrubs, and trees at
43 12 reasonable intervals.

43 13 (2) Maintaining drains, water lines, roads, buildings,
43 14 fences, and other structures.

43 15 (3) Maintaining machinery, tools, and equipment.

43 16 (4) Compensating maintenance employees, paying insurance
43 17 premiums, and making payments to employees' pension and
43 18 benefit plans.

43 19 (5) Paying overhead expenses incidental to such payments.

43 20 (6) Paying expenses necessary to maintain ownership,
43 21 transfer, and interment records of the cemetery.

43 22 b. The cemetery corporation's maintenance fund shall be
43 23 established as a separate fund. The principal of the
43 24 maintenance fund is intended to remain available perpetually
43 25 as a funding source for the care of the cemetery. The
43 26 principal of the maintenance fund shall not be reduced
43 27 voluntarily and must remain inviolable, except as provided in
43 28 this section. The cemetery corporation shall maintain the
43 29 principal of the maintenance fund separate from all operating
43 30 funds of the cemetery corporation.

43 31 c. A cemetery corporation shall be responsible for the
43 32 deposit of all moneys required to be placed in the maintenance
43 33 fund. These moneys shall be invested or deposited in a
43 34 financial account or accounts, unless the cemetery is a
43 35 religious cemetery or a cemetery owned or operated by a
44 1 political subdivision of this state. The maintenance fund may
44 2 receive and hold as a part of the maintenance fund or as an
44 3 incident to the maintenance fund any property contributed to
44 4 the maintenance fund. Moneys to be deposited in a maintenance
44 5 funds shall be deposited at a financial institution no later
44 6 than the fifteenth day after the close of the month when the

44 7 cemetery corporation receives the final payment from the
44 8 purchaser.

44 9 d. The maintenance fund and contributions to the
44 10 maintenance fund are for charitable purposes. The care
44 11 financed by the maintenance fund constitutes the discharge of
44 12 a duty due by the cemetery corporation to persons interred and
44 13 to be interred in the cemetery and for the benefit and
44 14 protection of the public by preserving and keeping the
44 15 cemetery from becoming a place of disorder, reproach, and
44 16 desolation in the community in which the cemetery is located.

44 17 e. A contribution to a maintenance fund is not invalid
44 18 because of the following:

44 19 (1) Indefiniteness or uncertainty as to the identity of
44 20 the person designated as a beneficiary in the instrument
44 21 establishing the maintenance fund.

44 22 (2) A violation of the law against perpetuities or the law
44 23 against the suspension of the power of alienation of title to
44 24 or use of property.

44 25 2. A financial institution holding moneys in a maintenance
44 26 fund for a cemetery corporation shall not do any of the
44 27 following:

44 28 a. Be owned, under the control of, or affiliated with a
44 29 cemetery corporation.

44 30 b. Use any funds required to be deposited pursuant to this
44 31 chapter to purchase an interest in a contract or agreement in
44 32 which the cemetery corporation is a party.

44 33 c. Otherwise invest moneys in a maintenance fund, directly
44 34 or indirectly, in a cemetery corporation's business
44 35 operations.

45 1 3. A cemetery corporation shall make reasonable investment
45 2 decisions and properly oversee and manage moneys in a
45 3 maintenance fund. A cemetery corporation shall use the
45 4 judgment and care, under the circumstances then prevailing,
45 5 that a person of prudence, discretion, and intelligence
45 6 exercises in the management of the person's own affairs,
45 7 without speculation in the permanent disposition of the
45 8 person's own funds, to ensure the probable safety of the
45 9 person's capital. The commissioner may take enforcement
45 10 action against a cemetery corporation for a breach of
45 11 fiduciary duty proven under this chapter.

45 12 4. Moneys deposited in a maintenance fund may be
45 13 commingled for investment purposes if separate accounting of
45 14 principal, interest, and income is maintained for each
45 15 cemetery and each deposit includes a detailed listing of the
45 16 amount deposited in trust for each purchaser. A cemetery
45 17 corporation may establish a common maintenance fund for two or
45 18 more cemeteries into which deposits required under this
45 19 chapter are made, provided that separate records of principal
45 20 and income are maintained for each cemetery for the benefit of
45 21 which the common maintenance fund is established.

45 22 5. A cemetery corporation may appoint an independent
45 23 investment adviser to advise the financial institution about
45 24 investment of the moneys in a maintenance fund.

45 25 6. Subject to agreement between the parties, a financial
45 26 institution may receive a reasonable fee from the maintenance
45 27 fund for services performed on behalf of the maintenance fund.
45 28 The maintenance fund shall pay the operation costs and any
45 29 annual audit fees.

45 30 7. All moneys required to be deposited by the cemetery
45 31 corporation shall be deposited in the name of the maintenance
45 32 fund, pursuant to the terms of a written agreement and the
45 33 cemetery corporation shall invest, reinvest, exchange, retain,
45 34 sell, and otherwise manage the maintenance fund for the
45 35 benefit and protection of the cemetery.

46 1 8. This section does not prohibit a cemetery corporation
46 2 from moving moneys in a maintenance fund from one financial
46 3 institution to another.

46 4 9. A cemetery corporation that operates a nonperpetual
46 5 care cemetery shall collect a care assessment equal to or
46 6 greater than the lesser of fifty dollars or twenty percent of
46 7 the gross selling price received by the cemetery corporation
46 8 for the sale of interment rights. The cemetery corporation
46 9 shall also collect a five dollar fee assessment from each
46 10 purchaser of interment rights. The fee assessments collected
46 11 by the cemetery corporation shall be submitted to the
46 12 commissioner no later than April 1 of the calendar year
46 13 following collection and shall be deposited in the insurance
46 14 division's cemetery fund. The care assessments shall be
46 15 deposited in the cemetery corporation's maintenance fund.

46 16 SUBCHAPTER 9

46 17 GOVERNMENTAL SUBDIVISIONS

46 18 Sec. 46. NEW SECTION. 523I.1001 CEMETERY AUTHORIZED.

46 19 The governing body of a governmental subdivision may
46 20 purchase, establish, operate, enclose, improve, or regulate a
46 21 cemetery. A cemetery owned or operated by a governmental
46 22 subdivision may sell interment rights subject to the
46 23 provisions of this chapter.

46 24 Sec. 47. NEW SECTION. 523I.1002 TRUST FOR CEMETERY.

46 25 1. A governmental subdivision that owns or operates a
46 26 cemetery or has control of cemetery property may act as a
46 27 permanent trustee for the perpetual maintenance of interment
46 28 spaces in the cemetery.

46 29 2. To act as a trustee, a majority of the governmental
46 30 subdivision's governing body must adopt an ordinance or
46 31 resolution stating the governmental subdivision's willingness
46 32 and intention to act as a trustee for the perpetual
46 33 maintenance of cemetery property. When the ordinance or
46 34 resolution is adopted and the trust is accepted, the trust is
46 35 perpetual.

47 1 Sec. 48. NEW SECTION. 523I.1003 AUTHORITY TO RECEIVE
47 2 GIFTS AND DEPOSITS FOR CARE == CERTIFICATES.

47 3 1. A governmental subdivision that is a trustee for the
47 4 perpetual maintenance of a cemetery may adopt reasonable rules
47 5 governing the receipt of a gift or grant from any source.

47 6 2. A governmental subdivision that is a trustee for a
47 7 person shall accept the amount the governmental subdivision
47 8 requires for permanent maintenance of an interment space on
47 9 behalf of that person or a decedent.

47 10 3. A governmental subdivision's acceptance of a deposit
47 11 for permanent maintenance of an interment space constitutes a
47 12 perpetual trust for the designated interment space.

47 13 4. Upon acceptance of a deposit, a governmental
47 14 subdivision's secretary, clerk, or mayor shall issue a
47 15 certificate in the name of the governmental subdivision to the
47 16 trustee or depositor. The certificate shall state all of the
47 17 following:

47 18 a. The depositor's name.

47 19 b. The amount and purpose of the deposit.

47 20 c. The location, with as much specificity as possible, of
47 21 the interment space to be maintained.

47 22 d. Other information required by the governmental
47 23 subdivision.

47 24 5. An individual, association, foundation, or corporation
47 25 that is interested in the maintenance of a neglected cemetery
47 26 in a governmental subdivision's possession and control may
47 27 donate funds to the cemetery's perpetual trust fund to
47 28 beautify and maintain the entire cemetery or burial grounds
47 29 generally.

47 30 Sec. 49. NEW SECTION. 523I.1004 INVESTMENT OF CARE
47 31 FUNDS.

47 32 Notwithstanding section 12B.10, a cemetery corporation
47 33 owned by a governmental subdivision may invest and reinvest
47 34 deposits under this subchapter as set forth in section
47 35 523I.1203. The trustee of the trust funds has a fiduciary
48 1 duty to make reasonable investment decisions and to properly
48 2 oversee and manage the funds entrusted to the trust fund.

48 3 Sec. 50. NEW SECTION. 523I.1005 APPOINTMENT OF SUCCESSOR
48 4 TRUSTEE.

48 5 A district judge of a county in which a cemetery is located
48 6 shall appoint a suitable successor or trustee to faithfully
48 7 execute a trust in accordance with this subchapter if a
48 8 governmental subdivision renounces a trust assumed under this
48 9 subchapter, fails to act as its trustee, a vacancy occurs, or
48 10 the appointment of a successor or trustee is otherwise
48 11 necessary.

48 12 Sec. 51. NEW SECTION. 523I.1006 PRIVATE CARE OF GRAVES.

48 13 This subchapter does not affect the right of a person who
48 14 has an interest in an interment space, or who is related to a
48 15 decedent interred in a cemetery, to beautify or maintain an
48 16 interment space individually or at the person's own expense in
48 17 accordance with reasonable rules established by the
48 18 governmental subdivision.

48 19 SUBCHAPTER 10

48 20 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

48 21 Sec. 52. NEW SECTION. 523I.1101 NEGLECTED CEMETERIES.

48 22 The commissioner shall create a form that interested
48 23 persons may use to report neglected cemeteries to the
48 24 commissioner and the county board of supervisors. The board
48 25 of supervisors of each county shall accept any neglected
48 26 cemetery report forms filed with the board and submit copies
48 27 of such report forms received during calendar years 2004,
48 28 2005, and 2006 to the commissioner no later than March 1 of

48 29 the year following receipt. The commissioner shall prepare an
48 30 annual summary of the report forms received, organized by
48 31 county.

48 32 Sec. 53. NEW SECTION. 523I.1102 CONDEMNATION OF
48 33 NEGLECTED CEMETERIES.

48 34 1. When a nonreligious cemetery within a county has been
48 35 neglected in whole or in part by the owners, the county may
49 1 acquire title to the cemetery by condemnation proceedings, to
49 2 be instituted and conducted in the manner prescribed in the
49 3 statutes providing for the exercise of the power of eminent
49 4 domain by counties. A court with jurisdiction over such
49 5 proceedings may, in its discretion, require the county to
49 6 acquire the entire cemetery, in which event the county may use
49 7 such part of the cemetery as may be necessary for its purposes
49 8 and sell the residue. Upon a showing of good cause, the court
49 9 may direct that, if possible, remains interred in the cemetery
49 10 be removed to another cemetery.

49 11 2. In the event that the proceeds from the condemnation
49 12 proceedings are insufficient to defray the costs of the suit
49 13 and removal and reinterment of the remains, then any
49 14 additional funds needed shall be paid by the county
49 15 instituting the suit. After payment of proper costs, any
49 16 residue of the proceeds shall be paid to the parties entitled
49 17 thereto. If there are any unknown parties who are entitled to
49 18 a portion of the proceeds, the county shall hold such amount
49 19 in trust for those parties, without any accrual of interest or
49 20 income. If any amount held in trust is not claimed within
49 21 seven years from the date of condemnation or sale of the
49 22 cemetery, or a portion thereof, title to the unclaimed funds
49 23 shall pass pursuant to the statute of escheats.

49 24 Sec. 54. NEW SECTION. 523I.1103 REMOVAL OF REMAINS.

49 25 1. Upon a showing of good cause, a county cemetery
49 26 commission may file suit in a district court in that county to
49 27 have remains interred in a cemetery owned and operated by the
49 28 commission removed to another cemetery. All persons in
49 29 interest, known or unknown, other than the plaintiffs, shall
49 30 be made defendants to the suit. If any parties are unknown,
49 31 notice may be given by publication. After hearing and a
49 32 showing of good cause for the removal, the court may order the
49 33 removal of the remains and the remains shall be properly
49 34 interred in another cemetery, at the expense of the county.
49 35 The removal and reinterment of the remains shall be done
50 1 pursuant to a disinterment permit issued under section 144.34
50 2 with due care and decency.

50 3 2. In deciding whether to order the removal of interred
50 4 remains, a court shall consider present or future access to
50 5 the cemetery, the historical significance of the cemetery, and
50 6 the wishes of the parties concerned if they are brought to the
50 7 court's attention, including the desire of any beneficiaries
50 8 to reserve their rights to waive a reservation of rights in
50 9 favor of removal, and shall exercise the court's sound
50 10 discretion in granting or refusing the removal of interred
50 11 remains.

50 12 3. Any heir at law or descendent of a deceased person
50 13 interred in a neglected cemetery may file suit in a district
50 14 court in the county where the cemetery is located, to have the
50 15 deceased person's remains interred in the cemetery removed to
50 16 another cemetery. The owner of the land, any beneficiaries of
50 17 any reservation of rights, and any other persons in interest,
50 18 known or unknown, other than the plaintiffs shall be made
50 19 defendants. If any parties are unknown, notice may be given
50 20 by publication. After hearing and upon a showing of good
50 21 cause, the court may order removal and the proper interment of
50 22 the remains in another cemetery, at the expense of the
50 23 petitioner. The removal and reinterment shall be done with
50 24 due care and decency.

50 25 SUBCHAPTER 11
50 26 PERPETUAL CARE CEMETERIES

50 27 Sec. 55. NEW SECTION. 523I.1201 APPLICABILITY.

50 28 1. All cemeteries are designated as either "perpetual care
50 29 cemeteries" or "nonperpetual care cemeteries" for the purposes
50 30 of this chapter.

50 31 2. A cemetery corporation organized or commencing business
50 32 in this state on or after July 1, 1995, shall operate as a
50 33 perpetual care cemetery and is subject to this subchapter.

50 34 3. A cemetery corporation that represents that it is
50 35 offering perpetual care is subject to this subchapter.

51 1 4. A cemetery corporation that operates a nonperpetual
51 2 care cemetery may elect to become a perpetual care cemetery by
51 3 complying with the terms of section 523I.1202, if at all times
51 4 subsequent to the date of the election, the cemetery

51 5 corporation complies with the other requirements of this
51 6 subchapter except section 523I.1203, subsection 1.
51 7 Sec. 56. NEW SECTION. 523I.1202 TRUST AGREEMENT ==
51 8 IRREVOCABLE TRUST.
51 9 1. A cemetery corporation operating as a perpetual care
51 10 cemetery shall execute a trust instrument and establish an
51 11 irrevocable trust fund to provide for the care and maintenance
51 12 of the cemetery.
51 13 2. The trust agreement shall provide for the appointment
51 14 of at least one trustee, with perpetual succession, in case
51 15 the cemetery corporation is dissolved or ceases to be
51 16 responsible for the cemetery's care and maintenance.
51 17 3. A cemetery corporation and the trustee or trustees of
51 18 the trust fund may, by agreement, amend the instrument that
51 19 established the fund to include any provision that is
51 20 necessary to comply with the requirements of this chapter.
51 21 4. A cemetery corporation shall be responsible for the
51 22 deposit of all moneys required to be placed in a trust fund.
51 23 5. The commissioner may require amendments to a trust
51 24 agreement that is not in accord with the provisions of this
51 25 chapter.
51 26 Sec. 57. NEW SECTION. 523I.1203 TRUST FUND REQUIREMENTS.
51 27 1. A religious cemetery or a cemetery owned or operated by
51 28 a political subdivision of this state is not required to make
51 29 a minimum initial deposit in a trust fund. A cemetery
51 30 corporation organized or commencing business in this state on
51 31 or after July 1, 1995, shall not commence operations as a
51 32 perpetual care cemetery unless the cemetery corporation has a
51 33 trust fund of at least twenty-five thousand dollars in cash.
51 34 2. If an initial deposit is made by a cemetery corporation
51 35 to satisfy subsection 1, the initial twenty-five thousand
52 1 dollar deposit may be withdrawn by the cemetery corporation
52 2 when the trust fund balance reaches one hundred thousand
52 3 dollars. An affidavit shall be filed with the commissioner
52 4 providing prior notice of the intended withdrawal of the
52 5 initial deposit and attesting that the money has not
52 6 previously been withdrawn. Upon a showing by the cemetery
52 7 corporation that the initial deposit has not previously been
52 8 withdrawn, the commissioner shall approve withdrawal of the
52 9 money and the withdrawal shall take place within one year
52 10 after the trust fund balance reaches one hundred thousand
52 11 dollars.
52 12 3. The trust fund shall be administered under the
52 13 jurisdiction of the district court of the county where the
52 14 cemetery is located. Notwithstanding chapter 633, annual
52 15 reports shall not be required unless specifically required by
52 16 the district court. Reports shall be filed with the court
52 17 when necessary to receive approval of appointments of
52 18 trustees, trust agreements and amendments, changes in fees or
52 19 expenses, and other matters within the court's jurisdiction.
52 20 A court having jurisdiction over a trust fund shall have full
52 21 jurisdiction to approve the appointment of trustees, the
52 22 amount of surety bond required, and investment of funds.
52 23 4. A trust fund must be established at a financial
52 24 institution, unless the cemetery is a religious cemetery or a
52 25 cemetery owned or operated by a governmental subdivision of
52 26 this state.
52 27 a. A financial institution may serve as a trustee if
52 28 granted those powers under the laws of this state or of the
52 29 United States. A financial institution acting as a trustee of
52 30 trust funds under this chapter shall invest the funds in
52 31 accordance with applicable law.
52 32 b. A financial institution acting as a trustee of trust
52 33 funds under this chapter has a fiduciary duty to make
52 34 reasonable investment decisions and to properly oversee and
52 35 manage the funds entrusted to the financial institution. A
53 1 trustee shall use the judgment and care, under the
53 2 circumstances then prevailing, that a person of prudence,
53 3 discretion, and intelligence exercises in the management of
53 4 the person's own affairs, without speculation, in the
53 5 permanent disposition of a person's own funds to ensure the
53 6 probable safety of the person's capital. The commissioner may
53 7 take enforcement action against a financial institution in its
53 8 capacity as trustee for a breach of fiduciary duty proven
53 9 under this chapter.
53 10 c. Moneys deposited under a master trust agreement may be
53 11 commingled by the financial institution for investment
53 12 purposes if separate accounting of principal, interest, and
53 13 income is maintained for each cemetery and each deposit
53 14 includes a detailed listing of the amount deposited in trust
53 15 for each purchaser. The trustors of two or more care funds

53 16 may establish a common trust fund in which deposits required
53 17 under this chapter are made, provided that separate records of
53 18 principal and income are maintained for each perpetual care
53 19 cemetery for the benefit of which the common trust fund is
53 20 established.

53 21 d. Subject to a master trust agreement, the cemetery
53 22 corporation may appoint an independent investment adviser to
53 23 advise the financial institution about investment of the trust
53 24 fund.

53 25 e. Subject to an agreement between the cemetery
53 26 corporation and the financial institution, the financial
53 27 institution may receive a reasonable fee from the trust fund
53 28 for services rendered as trustee. The trust fund shall pay
53 29 the trust operation costs and any annual audit fees.

53 30 f. If the amount of the trust funds exceeds two hundred
53 31 thousand dollars, the cemetery corporation or any officer,
53 32 director, agent, employee, or affiliate of the cemetery
53 33 corporation shall not serve as trustee unless the cemetery is
53 34 a religious cemetery or a cemetery owned or operated by a
53 35 governmental subdivision of this state. A financial
54 1 institution holding trust funds shall not do any of the
54 2 following:

54 3 (1) Be owned, under the control of, or affiliated with a
54 4 cemetery corporation.

54 5 (2) Use any funds required to be held in trust under this
54 6 chapter to purchase an interest in a contract or agreement in
54 7 which the cemetery corporation is a party.

54 8 (3) Otherwise invest trust funds, directly or indirectly,
54 9 in a cemetery corporation's business operations.

54 10 5. Moneys shall be deposited in the trust fund no later
54 11 than the fifteenth day after the close of the month when the
54 12 cemetery corporation receives the final payment from a
54 13 purchaser of interment rights in an amount equal to or greater
54 14 than either of the following:

54 15 a. The greater of fifty dollars or twenty percent of the
54 16 gross selling price received by the cemetery for the sale of
54 17 interment rights.

54 18 b. The amount charged for the perpetual care and special
54 19 care of a memorial or memorialization placed in the cemetery.
54 20 A fee for memorial care shall be uniformly charged on every
54 21 installation of a memorial in the cemetery based upon the size
54 22 of the memorial, using the height and width of the memorial or
54 23 the size of the ground surface area used for the memorial. A
54 24 fee for special care of a memorial may be collected if the
54 25 terms of the special care items and arrangements are clearly
54 26 specified in the interment rights purchase agreement. A
54 27 cemetery corporation's liability for acts of God and vandalism
54 28 is limited to income available from the care fund.

54 29 6. All moneys required to be deposited in the trust fund
54 30 by the cemetery corporation shall be deposited in the name of
54 31 the trustee, as trustee, under the terms of a trust agreement
54 32 and the trustee may invest, reinvest, exchange, retain, sell,
54 33 and otherwise manage the trust for the benefit and protection
54 34 of the cemetery.

54 35 7. This section does not prohibit a cemetery corporation
55 1 from moving trust funds from one financial institution to
55 2 another.

55 3 8. A trust fund may receive and hold as a part of the fund
55 4 or as an incident to the fund any property contributed to the
55 5 fund.

55 6 9. The trust fund and contributions to the trust fund are
55 7 for charitable purposes. The care financed by the fund is for
55 8 the following purposes:

55 9 a. The discharge of a duty due from the cemetery
55 10 corporation to persons interred and to be interred in the
55 11 cemetery.

55 12 b. The benefit and protection of the public by preserving
55 13 and keeping the cemetery in a dignified condition so that the
55 14 cemetery does not become a nuisance or a place of disorder,
55 15 reproach, and desolation in the community in which the
55 16 cemetery is located.

55 17 10. A contribution to a trust fund is not invalid because
55 18 of any of the following:

55 19 a. Indefiniteness or uncertainty as to the person
55 20 designated as a beneficiary in the instrument establishing the
55 21 fund.

55 22 b. A violation of the law against perpetuities or the law
55 23 against the suspension of the power of alienation of title to
55 24 or use of property.

55 25 Sec. 58. NEW SECTION. 523I.1204 PURPOSES OF CARE FUND.

55 26 1. The principal of a care fund is intended to remain

55 27 available perpetually as a funding source for care of the
55 28 cemetery. The principal of the fund shall not be reduced
55 29 voluntarily and shall remain inviolable, except as provided in
55 30 this section. The trustee or trustees of the care fund shall
55 31 maintain the principal of the care fund separate from all
55 32 operating funds of the cemetery corporation.

55 33 2. In establishing a care fund, the cemetery corporation
55 34 may adopt plans for the care of the cemetery and installed
55 35 memorials and memorialization.

56 1 3. A cemetery corporation may, by resolution adopted by a
56 2 vote of at least two-thirds of the members of its board at any
56 3 authorized meeting of the board, authorize the withdrawal and
56 4 use of not more than twenty percent of the principal of the
56 5 care fund to acquire additional land for cemetery purposes, to
56 6 repair a mausoleum or other building or structure intended for
56 7 cemetery purposes, or to build, improve, or repair roads and
56 8 walkways in the cemetery. The resolution shall establish a
56 9 reasonable repayment schedule, not to exceed five years, and
56 10 provide for interest in an amount comparable to the care
56 11 fund's current rate of return on its investments. However,
56 12 the care fund shall not be diminished below an amount equal to
56 13 the greater of one hundred thousand dollars or five thousand
56 14 dollars per acre of land in the cemetery. The resolution, and
56 15 either a bond or proof of insurance to guarantee replenishment
56 16 of the care fund, shall be filed with the commissioner thirty
56 17 days prior to the withdrawal of funds.

56 18 Sec. 59. NEW SECTION. 523I.1205 USE OF CARE FUND INCOME
56 19 AND CAPITAL GAINS.

56 20 1. Care fund income may be used in a manner determined by
56 21 the directors of the cemetery corporation to be in the best
56 22 interests of the cemetery, provided that care fund income
56 23 shall be used only for care that is described in a resolution,
56 24 bylaw, or other action or instrument establishing the fund,
56 25 including the general care and maintenance of memorials,
56 26 memorialization, and the cemetery. Fund income may be used
56 27 for any of the following purposes:

56 28 a. Cutting and trimming lawns, shrubs, and trees at
56 29 reasonable intervals.

56 30 b. Maintaining drains, water lines, roads, buildings,
56 31 fences, and other structures.

56 32 c. Maintaining machinery, tools, and equipment.

56 33 d. Compensating maintenance employees, paying insurance
56 34 premiums, and making payments to employees' pension and
56 35 benefit plans.

57 1 e. Paying overhead expenses incidental to such purposes.

57 2 f. Paying expenses necessary to maintain ownership,
57 3 transfer, and interment records of the cemetery corporation.

57 4 2. A cemetery corporation may, by amending the cemetery
57 5 corporation trust agreement, elect to withdraw capital gains
57 6 from the care fund, subject to the following conditions:

57 7 a. The amount of principal in the care fund shall be
57 8 adjusted annually by allocating income or capital gains as
57 9 necessary to adjust the principal of the care fund for
57 10 inflation, based on the consumer price index as set by the
57 11 commissioner and the amount of principal in the care fund at
57 12 the beginning of the prior year. The amount of principal in
57 13 the care fund shall also be adjusted by adding the amount of
57 14 the deposits received during the prior year, as required by
57 15 section 523I.1203, subsection 5.

57 16 b. For purposes of this section, "adjusted basis" means
57 17 the total of the market value of the care fund on the date of
57 18 the conversion, the aggregate amount of the inflation
57 19 adjustments required by this section, and the aggregate amount
57 20 of deposits received as required by section 523I.1203,
57 21 subsection 5, since the date of the conversion.

57 22 c. If the adjusted basis of the care fund is more than the
57 23 market value of the care fund at the end of the prior year,
57 24 the cemetery corporation shall not withdraw capital gains. If
57 25 the adjusted basis of the care fund is less than the market
57 26 value of the care fund at the end of the prior year, an amount
57 27 equal to fifty percent of the excess may be withdrawn and used
57 28 for the cemetery's care.

57 29 Sec. 60. NEW SECTION. 523I.1206 SUIT BY OWNERS OR
57 30 COMMISSIONER.

57 31 1. If the directors of a cemetery corporation do not care
57 32 for and maintain the cemetery, the district court of the
57 33 county in which the cemetery is located may do the following:

57 34 a. By injunction compel the directors to expend the net
57 35 income of the care fund as required by this chapter.

58 1 b. Appoint a receiver to take charge of the care fund and
58 2 expend the net income of the care fund as required by this

58 3 chapter.
58 4 2. Grant relief on a petition for relief filed pursuant to
58 5 this section by the commissioner or by at least five owners of
58 6 interment rights in the cemetery.

58 7 Sec. 61. NEW SECTION. 523I.1207 ADVERTISING.

58 8 1. A cemetery corporation shall not advertise, represent,
58 9 guarantee, promise, or contract to provide or offer perpetual
58 10 care or use terms or phrases like permanent care, permanent
58 11 maintenance, care forever, continuous care, eternal care, or
58 12 everlasting care to imply that a certain level of care and
58 13 financial security will be furnished or is guaranteed except
58 14 in compliance with the provisions of this subchapter.

58 15 2. A cemetery corporation or person advertising or selling
58 16 interment rights shall not represent that the purchase of the
58 17 interment rights is or will be a desirable speculative
58 18 investment for resale purposes.

58 19 Sec. 62. NEW SECTION. 523I.1208 PERPETUAL CARE REGISTRY.

58 20 1. A cemetery corporation that operates a perpetual care
58 21 cemetery shall maintain a registry of individuals who have
58 22 purchased interment rights in the cemetery subject to the
58 23 trust fund requirements of this subchapter.

58 24 2. The registry shall include the amount deposited in
58 25 trust for each interment rights agreement entered into on or
58 26 after July 1, 1995.

58 27 Sec. 63. NEW SECTION. 523I.1209 USE OF GIFT FOR SPECIAL
58 28 CARE.

58 29 A trustee may accept and hold money or property transferred
58 30 to the trustee in trust for the purpose of applying the
58 31 principal or income of the money or property transferred for a
58 32 purpose consistent with the purpose of a perpetual care
58 33 cemetery, including the following:

58 34 1. Improvement or embellishment of any part of the
58 35 cemetery.

59 1 2. Erection, renewal, repair, or preservation of a
59 2 monument, fence, building, or other structure in the cemetery.

59 3 3. Planting or cultivation of plants in or around the
59 4 cemetery.

59 5 4. Special care of or embellishment of an interment space,
59 6 section, or building in the cemetery.

59 7 Sec. 64. NEW SECTION. 523I.1210 GOVERNMENTAL
59 8 SUBDIVISIONS.

59 9 A governmental subdivision subject to this section may
59 10 commingle care funds for the purposes of investment and
59 11 administration and may file a single report, if each cemetery
59 12 is appropriately identified and separate records are
59 13 maintained for each cemetery.

59 14 Sec. 65. NEW SECTION. 523I.1211 ANNUAL REPORT BY
59 15 PERPETUAL CARE CEMETERIES.

59 16 1. A cemetery corporation that operates a perpetual care
59 17 cemetery shall file a written report at the end of
59 18 each fiscal year of the cemetery that includes the following:

59 19 a. The name and address of the cemetery.

59 20 b. The name and address of the cemetery corporation.

59 21 c. An affidavit that the cemetery is in compliance with
59 22 this chapter.

59 23 d. Copies of all sales agreement forms used by the
59 24 cemetery.

59 25 e. The amount of the principal of the cemetery
59 26 corporation's care funds at the end of the fiscal year.

59 27 f. The number of interments made and interment spaces sold
59 28 during the fiscal year.

59 29 2. The report and a five-dollar filing fee for each
59 30 certificate of interment rights issued during the fiscal year
59 31 of the cemetery shall be filed with the commissioner within
59 32 four months following the end of the cemetery corporation's
59 33 fiscal year in the form required by the commissioner. The
59 34 filing fee may be charged directly to the purchaser of the
59 35 interment rights.

60 1 Sec. 66. NEW SECTION. 523I.1212 UNIFIED ANNUAL REPORTS.

60 2 The commissioner shall permit the filing of a unified
60 3 report in the event of commonly owned or affiliated
60 4 cemeteries.

60 5 SUBCHAPTER 12

60 6 FRAUDULENT PRACTICES

60 7 Sec. 67. NEW SECTION. 523I.1301 MISLEADING FILINGS.

60 8 It is unlawful for a person to make or cause to be made, in
60 9 any document filed with the commissioner, or in any proceeding
60 10 under this chapter, any statement of material fact which is,
60 11 at the time and in the light of the circumstances under which
60 12 it is made, false or misleading, or, in connection with such
60 13 statement, to omit to state a material fact necessary in order

60 14 to make the statements made, in the light of the circumstances
60 15 under which they are made, not misleading.

60 16 Sec. 68. NEW SECTION. 523I.1302 MISREPRESENTATIONS OF
60 17 GOVERNMENT APPROVAL.

60 18 It is unlawful for a seller under this chapter to represent
60 19 or imply in any manner that the seller has been sponsored,
60 20 recommended, or approved, or that the seller's abilities or
60 21 qualifications have in any respect been passed upon by the
60 22 commissioner.

60 23 Sec. 69. NEW SECTION. 523I.1303 FRAUDULENT PRACTICES.

60 24 A person who commits any of the following acts commits a
60 25 fraudulent practice and is punishable as provided in chapter
60 26 714:

60 27 1. Knowingly fails to comply with any requirement of this
60 28 chapter.

60 29 2. Knowingly makes, causes to be made, or subscribes to a
60 30 false statement or representation in a report or other
60 31 document required under this chapter, implementing rules, or
60 32 orders, or renders such a report or document misleading
60 33 through the deliberate omission of information properly
60 34 belonging in the report or document.

60 35 3. Conspires to defraud in connection with the sale of
61 1 memorials, memorialization, opening and closing services,
61 2 scattering services, interment rights, or a combination
61 3 thereof under this chapter.

61 4 4. Fails to deposit funds under section 523I.815 or
61 5 section 523I.1203 or withdraws funds in a manner inconsistent
61 6 with this chapter.

61 7 5. Knowingly sells memorials, memorialization, opening and
61 8 closing services, scattering services, interment rights, or a
61 9 combination thereof without the permits required under this
61 10 chapter.

61 11 6. Deliberately misrepresents or omits a material fact
61 12 relative to the sale of memorials, memorialization, opening
61 13 and closing services, scattering services, interment rights,
61 14 or a combination thereof.

61 15 SUBCHAPTER 13

61 16 ADMINISTRATION AND ENFORCEMENT

61 17 Sec. 70. NEW SECTION. 523I.1401 ADMINISTRATION.

61 18 1. This chapter shall be administered by the commissioner.
61 19 The deputy administrator appointed pursuant to section 502.601
61 20 shall be the principal operations officer responsible to the
61 21 commissioner for the routine administration of this chapter
61 22 and management of the administrative staff. In the absence of
61 23 the commissioner, whether because of vacancy in the office due
61 24 to absence, physical disability, or other cause, the deputy
61 25 administrator shall, for the time being, have and exercise the
61 26 authority conferred upon the commissioner. The commissioner
61 27 may by order from time to time delegate to the deputy
61 28 administrator any or all of the functions assigned to the
61 29 commissioner in this chapter. The deputy administrator shall
61 30 employ officers, attorneys, accountants, and other employees
61 31 as needed for administering this chapter.

61 32 2. It is unlawful for the commissioner or any
61 33 administrative staff to use for personal benefit any
61 34 information which is filed with or obtained by the
61 35 commissioner and which is not made public. This chapter does
62 1 not authorize the commissioner or any staff member to disclose
62 2 any such information except among themselves or to other
62 3 cemetery and funeral administrators, regulatory authorities,
62 4 or governmental agencies, or when necessary and appropriate in
62 5 a proceeding or investigation under this chapter or as
62 6 required by chapter 22. This chapter neither creates nor
62 7 derogates any privileges that exist at common law or otherwise
62 8 when documentary or other evidence is sought under a subpoena
62 9 directed to the commissioner or any administrative staff.

62 10 Sec. 71. NEW SECTION. 523I.1402 SCOPE.

62 11 1. This chapter applies to cemeteries, to any person
62 12 advertising or offering memorials, memorialization, opening
62 13 and closing services, scattering services at a cemetery,
62 14 interment rights, or a combination thereof for sale, and to
62 15 interments made in areas not dedicated as a cemetery by a
62 16 person other than the state archaeologist.

62 17 2. This chapter applies when a purchase agreement is
62 18 executed within this state or an advertisement, promotion, or
62 19 offer to furnish memorials, memorialization, opening and
62 20 closing services, scattering services, interment rights, or a
62 21 combination thereof is made or accepted within this state. An
62 22 offer to furnish memorials, memorialization, opening and
62 23 closing services, scattering services, interment rights, or a
62 24 combination thereof is made within this state, whether or not

62 25 either party is then present in this state, when the offer
62 26 originates from this state or is directed by the offeror to
62 27 this state and received by the offeree in this state through
62 28 the mail, over the telephone, by the internet, or through any
62 29 other means of commerce.

62 30 3. If a foreign person does not have a registered agent or
62 31 agents in the state of Iowa, doing business within this state
62 32 shall constitute the person's appointment of the secretary of
62 33 state of the state of Iowa to be its true and lawful attorney
62 34 upon whom may be served all lawful process of original notice
62 35 in actions or proceedings arising or growing out of any
63 1 contract or tort.

63 2 Sec. 72. NEW SECTION. 523I.1403 INVESTIGATIONS AND
63 3 SUBPOENAS.

63 4 1. The commissioner may, for the purpose of discovering
63 5 violations of this chapter, or implementing rules or orders
63 6 issued under this chapter:

63 7 a. Make such public or private investigations within or
63 8 outside of this state as the commissioner deems necessary to
63 9 determine whether any person has violated or is about to
63 10 violate this chapter, implementing rules, or orders issued
63 11 under this chapter, or to aid in enforcement of this chapter,
63 12 or in the prescribing of rules and forms under this chapter.

63 13 b. Require or permit any person to file a statement in
63 14 writing, under oath or otherwise as the commissioner or
63 15 attorney general determines, as to all the facts and
63 16 circumstances concerning the matter to be investigated.

63 17 c. Notwithstanding chapter 22, keep confidential the
63 18 information obtained in the course of an investigation.
63 19 However, if the commissioner determines that it is necessary
63 20 or appropriate in the public interest or for the protection of
63 21 the public, the commissioner may share information with other
63 22 administrators, regulatory authorities, or governmental
63 23 agencies, or may publish information concerning a violation of
63 24 this chapter, implementing rules, or orders issued under this
63 25 chapter.

63 26 d. Investigate the cemetery corporation and examine the
63 27 books, accounts, papers, correspondence, memoranda, purchase
63 28 agreements, files, or other documents or records used by every
63 29 applicant and permit holder under this chapter.

63 30 e. Administer oaths and affirmations, subpoena witnesses,
63 31 compel their attendance, take evidence, and require the
63 32 production of any books, accounts, papers, correspondence,
63 33 memoranda, purchase agreements, files, or other documents or
63 34 records which the commissioner deems relevant or material to
63 35 any investigation or proceeding under this chapter and
64 1 implement rules, all of which may be enforced under chapter
64 2 17A.

64 3 f. Apply to the district court for an order requiring a
64 4 person's appearance before the commissioner or attorney
64 5 general, or a designee of either or both, in cases where the
64 6 person has refused to obey a subpoena issued by the
64 7 commissioner or attorney general. The person may also be
64 8 required to produce documentary evidence germane to the
64 9 subject of the investigation. Failure to obey a court order
64 10 under this subsection constitutes contempt of court.

64 11 2. The commissioner may issue and bring an action in
64 12 district court to enforce subpoenas within this state at the
64 13 request of an agency or administrator of another state, if the
64 14 activity constituting an alleged violation for which the
64 15 information is sought would be a violation of this chapter had
64 16 the activity occurred in this state.

64 17 Sec. 73. NEW SECTION. 523I.1404 MEDIATION.

64 18 1. The commissioner may order a cemetery corporation to
64 19 participate in mediation in any dispute regarding a purchase
64 20 agreement. Mediation performed under this section shall be
64 21 conducted by a mediator appointed by the commissioner and
64 22 shall comply with the provisions of chapter 679C.

64 23 2. Mediation of disputes pursuant to subsection 1 shall
64 24 include attendance at a mediation session with a mediator and
64 25 the parties to the dispute, listening to the mediator's
64 26 explanation of the mediation process by the mediator,
64 27 presentation of each party's view of the dispute, and
64 28 listening to the response by the other party. Participation
64 29 in mediation does not require that the parties reach a
64 30 mediation agreement.

64 31 3. Parties to the mediation shall have the right to advice
64 32 and presence of counsel at all times. The parties to the
64 33 mediation shall present any mediation agreement reached
64 34 through the mediation to the commissioner. If a mediation
64 35 agreement is not reached, the mediator shall file a report

65 1 with the commissioner. The costs of the mediation shall be
65 2 approved by the commissioner and shall be borne by the
65 3 insurance division's cemetery fund created pursuant to section
65 4 523I.1413.

65 5 Sec. 74. NEW SECTION. 523I.1405 CEASE AND DESIST ORDERS
65 6 == INJUNCTIONS.

65 7 If it appears to the commissioner that a person has engaged
65 8 or is about to engage in an act or practice constituting a
65 9 violation of this chapter, or implementing rules or orders
65 10 issued under this chapter, the commissioner or the attorney
65 11 general may do any of the following:

65 12 1. Issue a summary order directed to the person that
65 13 requires the person to cease and desist from engaging in such
65 14 act or practice. A person may request a hearing within thirty
65 15 days of issuance of the summary order. If a hearing is not
65 16 timely requested, the summary order shall become final by
65 17 operation of law. The order shall remain effective from the
65 18 date of issuance until the date the order becomes final by
65 19 operation of law or is overturned by a presiding officer
65 20 following a request for hearing. Section 17A.18A is
65 21 inapplicable to summary cease and desist orders issued under
65 22 this section.

65 23 2. Bring an action in the district court in any county of
65 24 the state for an injunction to restrain a person subject to
65 25 this chapter and any agents, employees, or associates of the
65 26 person from engaging in conduct or practices deemed contrary
65 27 to the public interest. In any proceeding for an injunction,
65 28 the commissioner or attorney general may apply to the court
65 29 for a subpoena to require the appearance of a defendant and
65 30 the defendant's agents, employees, or associates and for the
65 31 production of any books, accounts, papers, correspondence,
65 32 memoranda, purchase agreements, files, or other documents or
65 33 records germane to the hearing upon the petition for an
65 34 injunction. Upon a proper showing, a permanent or temporary
65 35 injunction, restraining order, or writ of mandamus shall be
66 1 granted and a receiver may be appointed for the defendant or
66 2 the defendant's assets. The commissioner or attorney general
66 3 shall not be required to post a bond.

66 4 Sec. 75. NEW SECTION. 523I.1406 COURT ACTION FOR FAILURE
66 5 TO COOPERATE.

66 6 1. If a person fails or refuses to file a statement or
66 7 report or to produce any books, accounts, papers,
66 8 correspondence, memoranda, purchase agreements, files, or
66 9 other documents or records, or to obey a subpoena issued by
66 10 the commissioner, the commissioner may refer the matter to the
66 11 attorney general, who may apply to a district court to enforce
66 12 compliance. The court may order any or all of the following:

66 13 a. Injunctive relief restricting or prohibiting the offer
66 14 or sale of memorials, memorialization, opening and closing
66 15 services, scattering services, interment rights, or a
66 16 combination thereof.

66 17 b. Revocation or suspension of a permit issued under this
66 18 chapter.

66 19 c. Production of documents or records including but not
66 20 limited to books, accounts, papers, correspondence, memoranda,
66 21 purchase agreements, files, or other documents or records.

66 22 d. Such other relief as may be required.

66 23 2. A court order issued pursuant to subsection 1 is
66 24 effective until the person files the statement or report or
66 25 produces the documents requested, or obeys the subpoena.

66 26 Sec. 76. NEW SECTION. 523I.1407 PROSECUTION FOR
66 27 VIOLATIONS OF LAW.

66 28 1. A violation of this chapter or rules adopted or orders
66 29 issued under this chapter is a violation of section 714.16,
66 30 subsection 2, paragraph "a". The remedies and penalties
66 31 provided by section 714.16, including but not limited to
66 32 injunctive relief and penalties, apply to violations of this
66 33 chapter.

66 34 2. If the commissioner believes that grounds exist for the
66 35 criminal prosecution of persons subject to this chapter for
67 1 violations of this chapter or any other law of this state, the
67 2 commissioner may forward to the attorney general or the county
67 3 attorney the grounds for the belief, including all evidence in
67 4 the commissioner's possession, so that the attorney general or
67 5 the county attorney may proceed with the matter as deemed
67 6 appropriate. At the request of the attorney general, the
67 7 county attorney shall appear and prosecute the action when
67 8 brought in the county attorney's county.

67 9 Sec. 77. NEW SECTION. 523I.1408 COOPERATION WITH OTHER
67 10 AGENCIES.

67 11 1. The commissioner may cooperate with any governmental

67 12 law enforcement or regulatory agency to encourage uniform
67 13 interpretation and administration of this chapter and
67 14 effective enforcement of this chapter and effective regulation
67 15 of the sale of memorials, memorialization, and cemeteries.
67 16 2. Cooperation with other agencies may include but is not
67 17 limited to:
67 18 a. Making a joint examination or investigation.
67 19 b. Holding a joint administrative hearing.
67 20 c. Filing and prosecuting a joint civil or administrative
67 21 proceeding.
67 22 d. Sharing and exchanging personnel.
67 23 e. Sharing and exchanging relevant information and
67 24 documents.
67 25 f. Formulating, in accordance with chapter 17A, rules or
67 26 proposed rules on matters such as statements of policy,
67 27 regulatory standards, guidelines, and interpretive opinions.
67 28 Sec. 78. NEW SECTION. 523I.1409 RULES, FORMS, AND
67 29 ORDERS.
67 30 1. Under chapter 17A, the commissioner may from time to
67 31 time make, amend, and rescind such rules, forms, and orders as
67 32 are necessary or appropriate for the protection of purchasers
67 33 and the public and to administer the provisions of this
67 34 chapter, its implementing rules, and orders issued under this
67 35 chapter.
68 1 2. A rule, form, or order shall not be made, amended, or
68 2 rescinded unless the commissioner finds that the action is
68 3 necessary or appropriate to protect purchasers and the public
68 4 and is consistent with the policies and provisions of this
68 5 chapter, its implementing rules, and orders issued under this
68 6 chapter.
68 7 3. A provision of this chapter imposing any liability does
68 8 not apply to an act done or omitted in good faith in
68 9 conformity with any rule, form, or order of the commissioner,
68 10 notwithstanding that the rule, form, or order may later be
68 11 amended or rescinded or be determined by judicial or other
68 12 authority to be invalid for any reason.
68 13 Sec. 79. NEW SECTION. 523I.1410 DATE OF FILING ==
68 14 INTERPRETIVE OPINIONS.
68 15 1. A document is filed when it is received by the
68 16 commissioner.
68 17 2. Requests for interpretive opinions may be granted in
68 18 the commissioner's discretion.
68 19 Sec. 80. NEW SECTION. 523I.1411 RECEIVERSHIPS.
68 20 1. The commissioner shall notify the attorney general of
68 21 the potential need for establishment of a receivership if the
68 22 commissioner finds that a cemetery subject to this chapter
68 23 meets one or more of the following conditions:
68 24 a. Is insolvent.
68 25 b. Has utilized trust funds for personal or business
68 26 purposes in a manner inconsistent with this chapter.
68 27 c. The amount of care funds currently held in trust for
68 28 perpetual care is less than the amount required by this
68 29 chapter.
68 30 2. The commissioner or attorney general may apply to the
68 31 district court in any county of the state for the
68 32 establishment of a receivership. Upon proof that any of the
68 33 conditions described in this section have occurred, the court
68 34 may grant a receivership.
68 35 Sec. 81. NEW SECTION. 523I.1412 LIQUIDATION PROCEDURES.
69 1 1. GROUNDS FOR LIQUIDATION. The commissioner may petition
69 2 the district court for an order directing the commissioner to
69 3 liquidate a cemetery corporation on any of the following
69 4 grounds:
69 5 a. The cemetery corporation did not deposit funds pursuant
69 6 to subchapter 12 or withdrew funds in a manner inconsistent
69 7 with this chapter and is insolvent.
69 8 b. The cemetery corporation did not deposit funds pursuant
69 9 to subchapter 12 or withdrew funds in a manner inconsistent
69 10 with this chapter and the condition of the cemetery
69 11 corporation is such that further transaction of business would
69 12 be hazardous, financially or otherwise, to purchasers or the
69 13 public.
69 14 2. LIQUIDATION ORDER.
69 15 a. An order to liquidate the business of a cemetery
69 16 corporation shall appoint the commissioner as liquidator and
69 17 shall direct the liquidator to immediately take possession of
69 18 the assets of the cemetery corporation and to administer them
69 19 under the general supervision of the court. The liquidator is
69 20 vested with the title to the property, contracts, rights of
69 21 action, and the books and records of the cemetery corporation,
69 22 wherever located, that is ordered liquidated as of the entry

69 23 of the final order of liquidation. The filing or recording of
69 24 the order with the clerk of court and the recorder of deeds of
69 25 the county in which the principal office or place of business
69 26 of the cemetery corporation is located, or, in the case of
69 27 real estate with the recorder of deeds of the county where the
69 28 property is located, constitutes the same notice as a deed,
69 29 bill of sale, or other evidence of title duly filed or
69 30 recorded with the recorder of deeds.

69 31 b. Upon issuance of an order, the rights and liabilities
69 32 of a cemetery corporation and of the cemetery corporation's
69 33 creditors, purchasers, owners, and other persons interested in
69 34 the cemetery corporation's estate shall become fixed as of the
69 35 date of the entry of the order of liquidation, except as
70 1 provided in subsection 14.

70 2 c. At the time of petitioning for an order of liquidation,
70 3 or at any time after the time of petitioning, the
70 4 commissioner, after making appropriate findings of a cemetery
70 5 corporation's insolvency, may petition the court for a
70 6 declaration of insolvency. After providing notice and hearing
70 7 as it deems proper, the court may make the declaration.

70 8 d. An order issued under this section shall require
70 9 accounting to the court by the liquidator. Accountings, at a
70 10 minimum, must include all funds received or disbursed by the
70 11 liquidator during the current period. An accounting shall be
70 12 filed within one year of the liquidation order and at such
70 13 other times as the court may require.

70 14 e. Within five days after the initiation of an appeal of
70 15 an order of liquidation, which order has not been stayed, the
70 16 commissioner shall present for the court's approval a plan for
70 17 the continued performance of the cemetery corporation's
70 18 obligations during the pendency of an appeal. The plan shall
70 19 provide for the continued performance of interment rights
70 20 agreements in the normal course of events, notwithstanding the
70 21 grounds alleged in support of the order of liquidation
70 22 including the ground of insolvency. If the defendant cemetery
70 23 corporation's financial condition, in the judgment of the
70 24 commissioner, will not support the full performance of all
70 25 obligations during the appeal pendency period, the plan may
70 26 prefer the claims of certain purchasers and claimants over
70 27 creditors and interested parties as well as other purchasers
70 28 and claimants, as the commissioner finds to be fair and
70 29 equitable, considering the relative circumstances of such
70 30 purchasers and claimants. The court shall examine the plan
70 31 submitted by the commissioner and if it finds the plan to be
70 32 in the best interests of the parties, the court shall approve
70 33 the plan. An action shall not lie against the commissioner or
70 34 any of the commissioner's deputies, agents, clerks,
70 35 assistants, or attorneys by any party based on preference in
71 1 an appeal pendency plan approved by the court.

71 2 3. POWERS OF LIQUIDATOR.

71 3 a. The liquidator may do any of the following:

71 4 (1) Appoint a special deputy to act for the liquidator
71 5 under this chapter, and determine the special deputy's
71 6 reasonable compensation. The special deputy shall have all
71 7 the powers of the liquidator granted by this section. The
71 8 special deputy shall serve at the pleasure of the liquidator.

71 9 (2) Hire employees and agents, legal counsel, accountants,
71 10 appraisers, consultants, and other personnel as the
71 11 commissioner may deem necessary to assist in the liquidation.

71 12 (3) With the approval of the court, fix reasonable
71 13 compensation of employees and agents, legal counsel,
71 14 accountants, appraisers, and consultants.

71 15 (4) Pay reasonable compensation to persons appointed and
71 16 defray from the funds or assets of the cemetery corporation
71 17 all expenses of taking possession of, conserving, conducting,
71 18 liquidating, disposing of, or otherwise dealing with the
71 19 business and property of the cemetery corporation. If the
71 20 property of the cemetery corporation does not contain
71 21 sufficient cash or liquid assets to defray the costs incurred,
71 22 the commissioner may advance the costs so incurred out of the
71 23 insurance division's cemetery fund. Amounts so advanced for
71 24 expenses of administration shall be repaid to the insurance
71 25 division's cemetery fund for the use of the division out of
71 26 the first available moneys of the cemetery corporation.

71 27 (5) Hold hearings, subpoena witnesses, and compel their
71 28 attendance, administer oaths, examine a person under oath, and
71 29 compel a person to subscribe to the person's testimony after
71 30 it has been correctly reduced to writing, and in connection to
71 31 the proceedings require the production of books, accounts,
71 32 papers, correspondence, memoranda, purchase agreements, files,
71 33 or other documents or records which the liquidator deems

71 34 relevant to the inquiry.
71 35 (6) Collect debts and moneys due and claims belonging to
72 1 the cemetery corporation, wherever located. Pursuant to this
72 2 subparagraph, the liquidator may do any of the following:
72 3 (a) Institute timely action in other jurisdictions to
72 4 forestall garnishment and attachment proceedings against
72 5 debts.
72 6 (b) Perform acts as are necessary or expedient to collect,
72 7 conserve, or protect its assets or property, including the
72 8 power to sell, compound, compromise, or assign debts for
72 9 purposes of collection upon terms and conditions as the
72 10 liquidator deems best.
72 11 (c) Pursue any creditor's remedies available to enforce
72 12 claims.
72 13 (7) Conduct public and private sales of the property of
72 14 the cemetery corporation.
72 15 (8) Use assets of the cemetery corporation under a
72 16 liquidation order to transfer obligations of purchase
72 17 agreements to a solvent cemetery corporation, if the transfer
72 18 can be accomplished without prejudice to the applicable
72 19 priorities under subsection 18.
72 20 (9) Acquire, hypothecate, encumber, lease, improve, sell,
72 21 transfer, abandon, or otherwise dispose of or deal with
72 22 property of the cemetery corporation at its market value or
72 23 upon terms and conditions as are fair and reasonable. The
72 24 liquidator shall also have power to execute, acknowledge, and
72 25 deliver deeds, assignments, releases, and other instruments
72 26 necessary to effectuate a sale of property or other
72 27 transaction in connection with the liquidation.
72 28 (10) Borrow money on the security of the cemetery
72 29 corporation's assets or without security and execute and
72 30 deliver documents necessary to that transaction for the
72 31 purpose of facilitating the liquidation. Money borrowed
72 32 pursuant to this subparagraph shall be repaid as an
72 33 administrative expense and shall have priority over any other
72 34 class 1 claims under the priority of distribution established
72 35 in subsection 18.
73 1 (11) Enter into contracts as necessary to carry out the
73 2 order to liquidate and affirm or disavow contracts to which
73 3 the cemetery corporation is a party.
73 4 (12) Continue to prosecute and to institute in the name of
73 5 the cemetery corporation or in the liquidator's own name any
73 6 and all suits and other legal proceedings, in this state or
73 7 elsewhere, and to abandon the prosecution of claims the
73 8 liquidator deems unprofitable to pursue further.
73 9 (13) Prosecute an action on behalf of the creditors,
73 10 purchasers, or owners against an officer of the cemetery
73 11 corporation or any other person.
73 12 (14) Remove records and property of the cemetery
73 13 corporation to the offices of the commissioner or to other
73 14 places as may be convenient for the purposes of efficient and
73 15 orderly execution of the liquidation.
73 16 (15) Deposit in one or more banks in this state sums as
73 17 are required for meeting current administration expenses and
73 18 distributions.
73 19 (16) Unless the court orders otherwise, invest funds not
73 20 currently needed.
73 21 (17) File necessary documents for recording in the office
73 22 of the recorder of deeds or record office in this state or
73 23 elsewhere where property of the cemetery corporation is
73 24 located.
73 25 (18) Assert defenses available to the cemetery corporation
73 26 against third persons, including statutes of limitations,
73 27 statutes of fraud, and the defense of usury. A waiver of a
73 28 defense by the cemetery corporation after a petition in
73 29 liquidation has been filed shall not bind the liquidator.
73 30 (19) Exercise and enforce the rights, remedies, and powers
73 31 of a creditor, purchaser, or owner, including the power to
73 32 avoid transfer or lien that may be given by the general law
73 33 and that is not included within subsections 7 through 9.
73 34 (20) Intervene in a proceeding wherever instituted that
73 35 might lead to the appointment of a receiver or trustee, and
74 1 act as the receiver or trustee whenever the appointment is
74 2 offered.
74 3 (21) Exercise powers now held or later conferred upon
74 4 receivers by the laws of this state which are not inconsistent
74 5 with this chapter.
74 6 b. This subsection does not limit the liquidator or
74 7 exclude the liquidator from exercising a power not listed in
74 8 paragraph "a" that may be necessary or appropriate to
74 9 accomplish the purposes of this chapter.

74 10 4. NOTICE TO CREDITORS AND OTHERS.

74 11 a. Unless the court otherwise directs, the liquidator
74 12 shall give notice of the liquidation order as soon as possible
74 13 by doing both of the following:

74 14 (1) Mailing notice, by first-class mail, to all persons
74 15 known or reasonably expected to have claims against the
74 16 cemetery corporation, including purchasers, at their last
74 17 known address as indicated by the records of the cemetery
74 18 corporation.

74 19 (2) Publication of notice in a newspaper of general
74 20 circulation in the county in which the cemetery corporation
74 21 has its principal place of business and in other locations as
74 22 the liquidator deems appropriate.

74 23 b. Notice to potential claimants under paragraph "a" shall
74 24 require claimants to file with the liquidator their claims
74 25 together with proofs of the claim under subsection 13 on or
74 26 before a date the liquidator shall specify in the notice.
74 27 Claimants shall keep the liquidator informed of their changes
74 28 of address, if any.

74 29 c. If notice is given pursuant to this subsection, the
74 30 distribution of assets of the cemetery corporation under this
74 31 chapter shall be conclusive with respect to claimants, whether
74 32 or not a claimant actually received notice.

74 33 5. ACTIONS BY AND AGAINST LIQUIDATOR.

74 34 a. After issuance of an order appointing a liquidator of a
74 35 cemetery corporation, an action at law or equity shall not be
75 1 brought against the cemetery corporation within this state or
75 2 elsewhere, and existing actions shall not be maintained or
75 3 further presented after issuance of the order. Whenever in
75 4 the liquidator's judgment, protection of the estate of the
75 5 cemetery corporation necessitates intervention in an action
75 6 against the cemetery corporation that is pending outside this
75 7 state, the liquidator may intervene in the action. The
75 8 liquidator may defend, at the expense of the estate of the
75 9 cemetery corporation, an action in which the liquidator
75 10 intervenes under this section.

75 11 b. Within two years or such additional time as applicable
75 12 law may permit, the liquidator, after the issuance of an order
75 13 for liquidation, may institute an action or proceeding on
75 14 behalf of the estate of the cemetery corporation upon any
75 15 cause of action against which the period of limitation fixed
75 16 by applicable law has not expired at the time of the filing of
75 17 the petition upon which the order is entered. If a period of
75 18 limitation is fixed by agreement for instituting a suit or
75 19 proceeding upon a claim, or for filing a claim, proof of
75 20 claim, proof of loss, demand, notice, or the like, or if in a
75 21 proceeding, judicial or otherwise, a period of limitation is
75 22 fixed in the proceeding or pursuant to applicable law for
75 23 taking an action, filing a claim or pleading, or doing an act,
75 24 and if the period has not expired at the date of the filing of
75 25 the petition, the liquidator may, for the benefit of the
75 26 estate, take any action or do any act, required of or
75 27 permitted to the cemetery corporation, within a period of one
75 28 hundred eighty days subsequent to the entry of an order for
75 29 liquidation, or within a further period as is shown to the
75 30 satisfaction of the court not to be unfairly prejudicial to
75 31 the other party.

75 32 c. A statute of limitations or defense of laches shall not
75 33 run with respect to an action against a cemetery corporation
75 34 between the filing of a petition for liquidation against the
75 35 cemetery corporation and the denial of the petition. An
76 1 action against the cemetery corporation that might have been
76 2 commenced when the petition was filed may be commenced for at
76 3 least sixty days after the petition is denied.

76 4 6. COLLECTION AND LIST OF ASSETS.

76 5 a. As soon as practicable after the liquidation order but
76 6 not later than one hundred twenty days after such order, the
76 7 liquidator shall prepare in duplicate a list of the cemetery
76 8 corporation's assets. The list shall be amended or
76 9 supplemented as the liquidator may determine. One copy shall
76 10 be filed in the office of the clerk of court, and one copy
76 11 shall be retained for the liquidator's files. Amendments and
76 12 supplements shall be similarly filed.

76 13 b. The liquidator shall reduce the assets to a degree of
76 14 liquidity that is consistent with the effective execution of
76 15 the liquidation.

76 16 c. A submission of a proposal to the court for
76 17 distribution of assets in accordance with subsection 11
76 18 fulfills the requirements of paragraph "a".

76 19 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

76 20 a. A transfer made and an obligation incurred by a

76 21 cemetery corporation within one year prior to the filing of a
76 22 successful petition for liquidation under this chapter is
76 23 fraudulent as to then existing and future creditors if made or
76 24 incurred without fair consideration, or with actual intent to
76 25 hinder, delay, or defraud either existing or future creditors.
76 26 A fraudulent transfer made or an obligation incurred by a
76 27 cemetery corporation ordered to be liquidated under this
76 28 chapter may be avoided by the liquidator, except as to a
76 29 person who in good faith is a purchaser, lienor, or obligee
76 30 for a present fair equivalent value. A purchaser, lienor, or
76 31 obligee, who in good faith has given consideration that is
76 32 less than the present fair equivalent value for such transfer,
76 33 lien, or obligation may retain the transfer, lien, or
76 34 obligation as security for repayment. The court may, on due
76 35 notice, order any such transfer, lien, or obligation to be
77 1 preserved for the benefit of the cemetery corporation and in
77 2 that event, the receiver shall succeed to and may enforce the
77 3 rights of the purchaser, lienor, or obligee.

77 4 b. (1) A transfer of property other than real property is
77 5 made when it becomes perfected so that a subsequent lien
77 6 obtainable by legal or equitable proceedings on a simple
77 7 contract could not become superior to the rights of the
77 8 transferee under subsection 9, paragraph "c".

77 9 (2) A transfer of real property is made when it becomes
77 10 perfected so that a subsequent bona fide purchaser from the
77 11 cemetery corporation could not obtain rights superior to the
77 12 rights of the transferee.

77 13 (3) A transfer that creates an equitable lien is not
77 14 perfected if there are available means by which a legal lien
77 15 could be perfected.

77 16 (4) A transfer not perfected prior to the filing of a
77 17 petition for liquidation is deemed to be made immediately
77 18 before the filing of the successful petition.

77 19 (5) This subsection applies whether or not there are or
77 20 were creditors who might have obtained a lien or persons who
77 21 might have become bona fide purchasers.

77 22 8. FRAUDULENT TRANSFER AFTER PETITION.

77 23 a. After a petition for liquidation has been filed, a
77 24 transfer of real property of the cemetery corporation made to
77 25 a person acting in good faith is valid against the liquidator
77 26 if made for a present fair equivalent value. If the transfer
77 27 is not made for a present fair equivalent value, the transfer
77 28 is valid to the extent of the present consideration actually
77 29 paid for which amount the transferee shall have a lien on the
77 30 property transferred. The commencement of a proceeding in
77 31 liquidation is constructive notice upon the recording of a
77 32 copy of the petition for or order of liquidation with the
77 33 recording of deeds in the county where any real property in
77 34 question is located. The exercise by a court of the United
77 35 States or a state or jurisdiction to authorize a judicial sale
78 1 of real property of the cemetery corporation within a county
78 2 in a state shall not be impaired by the pendency of a
78 3 proceeding unless the copy is recorded in the county prior to
78 4 the consummation of the judicial sale.

78 5 b. After a petition for liquidation has been filed and
78 6 before either the liquidator takes possession of the property
78 7 of the cemetery corporation or an order of liquidation is
78 8 granted:

78 9 (1) A transfer of the property, other than real property,
78 10 of the cemetery corporation made to a person acting in good
78 11 faith is valid against the liquidator if made for a present
78 12 fair equivalent value. If the transfer was not made for a
78 13 present fair equivalent value, then the transfer is valid to
78 14 the extent of the present consideration actually paid for
78 15 which amount the transferee shall have a lien on the property
78 16 transferred.

78 17 (2) If acting in good faith, a person indebted to the
78 18 cemetery corporation or holding property of the cemetery
78 19 corporation may pay the debt or deliver the property, or any
78 20 part of the property, to the cemetery corporation or upon the
78 21 cemetery corporation's order as if the petition were not
78 22 pending.

78 23 (3) A person having actual knowledge of the pending
78 24 liquidation is not acting in good faith.

78 25 (4) A person asserting the validity of a transfer under
78 26 this subsection has the burden of proof. Except as provided
78 27 in this subsection, a transfer by or on behalf of the cemetery
78 28 corporation after the date of the petition for liquidation by
78 29 any person other than the liquidator is not valid against the
78 30 liquidator.

78 31 c. A person receiving any property from the cemetery

78 32 corporation or any benefit of the property of the cemetery
78 33 corporation which is a fraudulent transfer under paragraph "a"
78 34 is personally liable for the property or benefit and shall
78 35 account to the liquidator.

79 1 d. This chapter does not impair the negotiability of
79 2 currency or negotiable instruments.

79 3 9. VOIDABLE PREFERENCES AND LIENS.

79 4 a. (1) A preference is a transfer of the property of a
79 5 cemetery corporation to or for the benefit of a creditor for
79 6 an antecedent debt made or suffered by the cemetery
79 7 corporation within one year before the filing of a successful
79 8 petition for liquidation under this chapter, the effect of
79 9 which transfer may be to enable the creditor to obtain a
79 10 greater percentage of this debt than another creditor of the
79 11 same class would receive. If a liquidation order is entered
79 12 while the cemetery corporation is already subject to a
79 13 receivership, then the transfers are preferences if made or
79 14 suffered within one year before the filing of the successful
79 15 petition for the receivership, or within two years before the
79 16 filing of the successful petition for liquidation, whichever
79 17 time is shorter.

79 18 (2) A preference may be avoided by the liquidator if any
79 19 of the following exist:

79 20 (a) The cemetery corporation was insolvent at the time of
79 21 the transfer.

79 22 (b) The transfer was made within four months before the
79 23 filing of the petition.

79 24 (c) At the time the transfer was made, the creditor
79 25 receiving the transfer or to be benefited by the transfer or
79 26 the creditor's agent acting with reference to the transfer had
79 27 reasonable cause to believe that the cemetery corporation was
79 28 insolvent or was about to become insolvent.

79 29 (d) The creditor receiving the transfer was an officer, or
79 30 an employee, attorney, or other person who was in fact in a
79 31 position of comparable influence in the cemetery corporation
79 32 to an officer whether or not the person held the position of
79 33 an officer, owner, or other person, firm, corporation,
79 34 association, or aggregation of persons with whom the cemetery
79 35 corporation did not deal at arm's length.

80 1 (3) Where the preference is voidable, the liquidator may
80 2 recover the property. If the property has been converted, the
80 3 liquidator may recover its value from a person who has
80 4 received or converted the property. However, if a bona fide
80 5 purchaser or lienor has given less than the present fair
80 6 equivalent value, the purchaser or lienor shall have a lien
80 7 upon the property to the extent of the consideration actually
80 8 given. Where a preference by way of lien or security interest
80 9 is voidable, the court may on due notice order the lien or
80 10 security interest to be preserved for the benefit of the
80 11 estate, in which event the lien or title shall pass to the
80 12 liquidator.

80 13 b. (1) A transfer of property other than real property is
80 14 made when it becomes perfected so that a subsequent lien
80 15 obtainable by legal or equitable proceedings on a simple
80 16 contract could not become superior to the rights of the
80 17 transferee.

80 18 (2) A transfer of real property is made when it becomes
80 19 perfected so that a subsequent bona fide purchaser from the
80 20 cemetery corporation could not obtain rights superior to the
80 21 rights of the transferee.

80 22 (3) A transfer which creates an equitable lien is not
80 23 perfected if there are available means by which a legal lien
80 24 could be created.

80 25 (4) A transfer not perfected prior to the filing of a
80 26 petition for liquidation is deemed to be made immediately
80 27 before the filing of the successful petition.

80 28 (5) This subsection applies whether or not there are or
80 29 were creditors who might have obtained liens or persons who
80 30 might have become bona fide purchasers.

80 31 c. (1) A lien obtainable by legal or equitable
80 32 proceedings upon a simple contract is one arising in the
80 33 ordinary course of the proceedings upon the entry or docketing
80 34 of a judgment or decree, or upon attachment, garnishment,
80 35 execution, or like process, whether before, upon, or after
81 1 judgment or decree and whether before or upon levy. It does
81 2 not include liens which under applicable law are given a
81 3 special priority over other liens which are prior in time.

81 4 (2) A lien obtainable by legal or equitable proceedings
81 5 may become superior to the rights of a transferee, or a
81 6 purchaser may obtain rights superior to the rights of a
81 7 transferee within the meaning of paragraph "b", if such

81 8 consequences follow only from the lien or purchase itself, or
81 9 from the lien or purchase followed by a step wholly within the
81 10 control of the respective lienholder or purchaser, with or
81 11 without the aid of ministerial action by public officials.
81 12 However, a lien does not become superior and a purchase does
81 13 not create superior rights for the purpose of paragraph "b"
81 14 through an act subsequent to the obtaining of a lien or
81 15 subsequent to a purchase which requires the agreement or
81 16 concurrence of any third party or which requires further
81 17 judicial action or ruling.

81 18 d. A transfer of property for or on account of a new and
81 19 contemporaneous consideration, which is under paragraph "b",
81 20 made or suffered after the transfer because of delay in
81 21 perfecting it, does not become a transfer for or on account of
81 22 an antecedent debt if any acts required by the applicable law
81 23 to be performed in order to perfect the transfer as against
81 24 liens or a bona fide purchaser's rights are performed within
81 25 twenty-one days or any period expressly allowed by the law,
81 26 whichever is less. A transfer to secure a future loan, if a
81 27 loan is actually made, or a transfer which becomes security
81 28 for a future loan, shall have the same effect as a transfer
81 29 for or on account of a new and contemporaneous consideration.

81 30 e. If a lien which is voidable under paragraph "a",
81 31 subparagraph (2), has been dissolved by the furnishing of a
81 32 bond or other obligation, the surety of which has been
81 33 indemnified directly or indirectly by the transfer or the
81 34 creation of a lien upon property of a cemetery corporation
81 35 before the filing of a petition under this chapter which
82 1 results in the liquidation order, the indemnifying transfer or
82 2 lien is also voidable.

82 3 f. The property affected by a lien voidable under
82 4 paragraphs "a" and "e" is discharged from the lien. The
82 5 property and any of the indemnifying property transferred to
82 6 or for the benefit of a surety shall pass to the liquidator.
82 7 However, the court may on due notice order a lien to be
82 8 preserved for the benefit of the estate and the court may
82 9 direct that the conveyance be executed to evidence the title
82 10 of the liquidator.

82 11 g. The court shall have summary jurisdiction of a
82 12 proceeding by a liquidator to hear and determine the rights of
82 13 the parties under this section. Reasonable notice of hearing
82 14 in the proceeding shall be given to all parties in interest,
82 15 including the obligee of a releasing bond or other like
82 16 obligation. Where an order is entered for the recovery of
82 17 indemnifying property in kind or for the avoidance of an
82 18 indemnifying lien, upon application of any party in interest,
82 19 the court shall in the same proceeding ascertain the value of
82 20 the property or lien. If the value is less than the amount
82 21 for which the property is indemnified or less than the amount
82 22 of the lien, the transferee or lienholder may elect to retain
82 23 the property or lien upon payment of its value, as ascertained
82 24 by the court, to the liquidator within the time as fixed by
82 25 the court.

82 26 h. The liability of a surety under a releasing bond or
82 27 other like obligation is discharged to the extent of the value
82 28 of the indemnifying property recovered or the indemnifying
82 29 lien nullified and avoided by the liquidator. Where the
82 30 property is retained under paragraph "g", the liability of the
82 31 surety is discharged to the extent of the amount paid to the
82 32 liquidator.

82 33 i. If a creditor has been preferred for property which
82 34 becomes a part of the cemetery corporation's estate, and
82 35 afterward in good faith gives the cemetery corporation further
83 1 credit without security of any kind, the amount of the new
83 2 credit remaining unpaid at the time of the petition may be set
83 3 off against the preference which would otherwise be
83 4 recoverable from the creditor.

83 5 j. If within four months before the filing of a successful
83 6 petition for liquidation under this chapter, or at any time in
83 7 contemplation of a proceeding to liquidate, a cemetery
83 8 corporation, directly or indirectly, pays money or transfers
83 9 property to an attorney for services rendered or to be
83 10 rendered, the transaction may be examined by the court on its
83 11 own motion or shall be examined by the court on petition of
83 12 the liquidator. The payment or transfer shall be held valid
83 13 only to the extent of a reasonable amount to be determined by
83 14 the court. The excess may be recovered by the liquidator for
83 15 the benefit of the estate. However, where the attorney is in
83 16 a position of influence in a cemetery corporation of an
83 17 affiliate, payment of any money or the transfer of any
83 18 property to the attorney for services rendered or to be

83 19 rendered shall be governed by the provisions of paragraph "a",
83 20 subparagraph (2), subparagraph subdivision (d).

83 21 k. (1) An officer, manager, employee, shareholder,
83 22 subscriber, attorney, or other person acting on behalf of the
83 23 cemetery corporation who knowingly participates in giving any
83 24 preference when the person has reasonable cause to believe the
83 25 cemetery corporation is or is about to become insolvent at the
83 26 time of the preference is personally liable to the liquidator
83 27 for the amount of the preference. There is an inference that
83 28 reasonable cause exists if the transfer was made within four
83 29 months before the date of filing of the successful petition
83 30 for liquidation.

83 31 (2) A person receiving property from the cemetery
83 32 corporation or the benefit of the property of the cemetery
83 33 corporation as a preference voidable under paragraph "a" is
83 34 personally liable for the property and shall account to the
83 35 liquidator.

84 1 (3) This subsection shall not prejudice any other claim by
84 2 the liquidator against any person.

84 3 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

84 4 a. A claim of a creditor who has received or acquired a
84 5 preference, lien, conveyance, transfer, assignment, or
84 6 encumbrance, voidable under this chapter, shall not be allowed
84 7 unless the creditor surrenders the preference, lien,
84 8 conveyance, transfer, assignment, or encumbrance. If the
84 9 avoidance is effected by a proceeding in which a final
84 10 judgment has been entered, the claim shall not be allowed
84 11 unless the money is paid or the property is delivered to the
84 12 liquidator within thirty days from the date of the entering of
84 13 the final judgment. However, the court having jurisdiction
84 14 over the liquidation may allow further time if there is an
84 15 appeal or other continuation of the proceeding.

84 16 b. A claim allowable under paragraph "a" by reason of a
84 17 voluntary or involuntary avoidance, preference, lien,
84 18 conveyance, transfer, assignment, or encumbrance may be filed
84 19 as an excused late filing under subsection 12, if filed within
84 20 thirty days from the date of the avoidance or within the
84 21 further time allowed by the court under paragraph "a".

84 22 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

84 23 a. From time to time as assets become available, the
84 24 liquidator shall make application to the court for approval of
84 25 a proposal to disburse assets out of marshaled assets.

84 26 b. The proposal shall at least include provisions for all
84 27 of the following:

84 28 (1) Reserving amounts for the payment of all the
84 29 following:

84 30 (a) Expenses of administration.

84 31 (b) To the extent of the value of the security held, the
84 32 payment of claims of secured creditors.

84 33 (c) Claims falling within the priorities established in
84 34 subsection 18, paragraphs "a" and "b".

84 35 (2) Disbursement of the assets marshaled to date and
85 1 subsequent disbursement of assets as they become available.

85 2 c. Action on the application may be taken by the court
85 3 provided that the liquidator's proposal complies with
85 4 paragraph "b".

85 5 12. FILING PROOFS OF CLAIMS.

85 6 a. Proof of all claims shall be filed with the liquidator
85 7 in the form required by subsection 13 on or before the last
85 8 day for filing specified in the notice required under
85 9 subsection 4.

85 10 b. The liquidator may permit a claimant making a late
85 11 filing to share in distributions, whether past or future, as
85 12 if the claimant were not late, to the extent that the payment
85 13 will not prejudice the orderly administration of the
85 14 liquidation under any of the following circumstances:

85 15 (1) The existence of the claim was not known to the
85 16 claimant and the claimant filed the claim as promptly as
85 17 reasonably possible after learning of it.

85 18 (2) A transfer to a creditor was avoided under subsections
85 19 7 through 9, or was voluntarily surrendered under subsection
85 20 10, and the filing satisfies the conditions of subsection 10.

85 21 (3) The valuation under subsection 17 of security held by
85 22 a secured creditor shows a deficiency, which is filed within
85 23 thirty days after the valuation.

85 24 c. The liquidator may consider any claim filed late and
85 25 permit the claimant to receive distributions which are
85 26 subsequently declared on any claims of the same or lower
85 27 priority if the payment does not prejudice the orderly
85 28 administration of the liquidation. The late-filing claimant
85 29 shall receive at each distribution the same percentage of the

85 30 amount allowed on the claim as is then being paid to claimants
85 31 of any lower priority. This shall continue until the claim
85 32 has been paid in full.

85 33 13. PROOF OF CLAIM.

85 34 a. Proof of claim shall consist of a statement signed by
85 35 the claimant that includes all of the following that are
86 1 applicable:

86 2 (1) The particulars of the claim, including the
86 3 consideration given for it.

86 4 (2) The identity and amount of the security on the claim.

86 5 (3) The payments, if any, made on the debt.

86 6 (4) A statement that the sum claimed is justly owing and
86 7 that there is no setoff, counterclaim, or defense to the
86 8 claim.

86 9 (5) Any right of priority of payment or other specific
86 10 right asserted by the claimant.

86 11 (6) A copy of the written instrument which is the
86 12 foundation of the claim.

86 13 (7) The name and address of the claimant and the attorney
86 14 who represents the claimant, if any.

86 15 b. A claim need not be considered or allowed if it does
86 16 not contain all the information identified in paragraph "a"
86 17 which is applicable. The liquidator may require that a
86 18 prescribed form be used and may require that other information
86 19 and documents be included.

86 20 c. At any time the liquidator may request the claimant to
86 21 present information or evidence supplementary to that required
86 22 under paragraph "a", and may take testimony under oath,
86 23 require production of affidavits or depositions, or otherwise
86 24 obtain additional information or evidence.

86 25 d. A judgment or order against a cemetery corporation
86 26 entered after the date of filing of a successful petition for
86 27 liquidation, or a judgment or order against the cemetery
86 28 corporation entered at any time by default or by collusion
86 29 need not be considered as evidence of liability or of the
86 30 amount of damages. A judgment or order against a cemetery
86 31 corporation before the filing of the petition need not be
86 32 considered as evidence of liability or of the amount of
86 33 damages.

86 34 14. SPECIAL CLAIMS.

86 35 a. A claim may be allowed even if contingent, if it is
87 1 filed pursuant to subsection 12. The claim may be allowed and
87 2 the claimant may participate in all distributions declared
87 3 after it is filed to the extent that it does not prejudice the
87 4 orderly administration of the liquidation.

87 5 b. Claims that are due except for the passage of time
87 6 shall be treated as absolute claims are treated. However, the
87 7 claims may be discounted at the legal rate of interest.

87 8 c. Claims made under employment contracts by directors,
87 9 principal officers, or persons in fact performing similar
87 10 functions or having similar powers are limited to payment for
87 11 services rendered prior to the issuance of an order of
87 12 liquidation under subsection 2.

87 13 15. DISPUTED CLAIMS.

87 14 a. If a claim is denied in whole or in part by the
87 15 liquidator, written notice of the determination shall be given
87 16 to the claimant or the claimant's attorney by first-class mail
87 17 at the address shown in the proof of claim. Within sixty days
87 18 from the mailing of the notice, the claimant may file
87 19 objections with the liquidator. Unless a filing is made, the
87 20 claimant shall not further object to the determination.

87 21 b. If objections are filed with the liquidator and the
87 22 liquidator does not alter the denial of the claim as a result
87 23 of the objections, the liquidator shall ask the court for a
87 24 hearing as soon as practicable and give notice of the hearing
87 25 by first-class mail to the claimant or the claimant's attorney
87 26 and to any other persons directly affected. The notice shall
87 27 be given not less than ten nor more than thirty days before
87 28 the date of hearing. The matter shall be heard by the court
87 29 or by a court-appointed referee. The referee shall submit
87 30 findings of fact along with a recommendation.

87 31 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
87 32 against a cemetery corporation is secured in whole or in part
87 33 by the undertaking of another person, fails to prove and file
87 34 that claim, then the other person may do so in the creditor's
87 35 name and shall be subrogated to the rights of the creditor,
88 1 whether the claim has been filed by the creditor or by the
88 2 other person in the creditor's name to the extent that the
88 3 other person discharges the undertaking. However, in the
88 4 absence of an agreement with the creditor to the contrary, the
88 5 other person is not entitled to any distribution until the

88 6 amount paid to the creditor on the undertaking plus the
88 7 distributions paid on the claim from the cemetery
88 8 corporation's estate to the creditor equal the amount of the
88 9 entire claim of the creditor. An excess received by the
88 10 creditor shall be held by the creditor in trust for the other
88 11 person.

88 12 17. SECURED CREDITOR'S CLAIMS.

88 13 a. The value of the security held by a secured creditor
88 14 shall be determined in one of the following ways, as the court
88 15 may direct:

88 16 (1) By converting the security into money according to the
88 17 terms of the agreement pursuant to which the security was
88 18 delivered to the creditors.

88 19 (2) By agreement, arbitration, compromise, or litigation
88 20 between the creditor and the liquidator.

88 21 b. The determination shall be under the supervision and
88 22 control of the court with due regard for the recommendation of
88 23 the liquidator. The amount so determined shall be credited
88 24 upon the secured claim. A deficiency shall be treated as an
88 25 unsecured claim. If the claimant surrenders the security to
88 26 the liquidator, the entire claim shall be allowed as if
88 27 unsecured.

88 28 18. PRIORITY OF DISTRIBUTION. The priority of
88 29 distribution of claims from the cemetery corporation's estate
88 30 shall be in accordance with the order in which each class of
88 31 claims is set forth. Claims in each class shall be paid in
88 32 full or adequate funds retained for the payment before the
88 33 members of the next class receive any payment. Subclasses
88 34 shall not be established within a class. The order of
88 35 distribution of claims is as follows:

89 1 a. CLASS 1. The costs and expenses of administration,
89 2 including but not limited to the following:

89 3 (1) Actual and necessary costs of preserving or recovering
89 4 assets of the cemetery corporation.

89 5 (2) Compensation for all authorized services rendered in
89 6 the liquidation.

89 7 (3) Necessary filing fees.

89 8 (4) Fees and mileage payable to witnesses.

89 9 (5) Authorized reasonable attorney fees and other
89 10 professional services rendered in the liquidation.

89 11 b. CLASS 2. Reasonable compensation to employees for
89 12 services performed to the extent that they do not exceed two
89 13 months of monetary compensation and represent payment for
89 14 services performed within one year before the filing of the
89 15 petition for liquidation. Officers and directors are not
89 16 entitled to the benefit of this priority. The priority is in
89 17 lieu of any other similar priority which may be authorized by
89 18 law as to wages or compensation of employees.

89 19 c. CLASS 3. Claims under purchase agreements.

89 20 d. CLASS 4. Claims of general creditors.

89 21 e. CLASS 5. Claims of the federal or of any state or
89 22 local government. Claims, including those of a governmental
89 23 body for a penalty or forfeiture, are allowed in this class
89 24 only to the extent of the pecuniary loss sustained from the
89 25 act, transaction, or proceeding out of which the penalty or
89 26 forfeiture arose, with reasonable and actual costs incurred.
89 27 The remainder of such claims shall be postponed to the class
89 28 of claims under paragraph "g".

89 29 f. CLASS 6. Claims filed late or any other claims other
89 30 than claims under paragraph "g".

89 31 g. CLASS 7. The claims of shareholders or other owners.

89 32 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

89 33 a. The liquidator shall review claims duly filed in the
89 34 liquidation and shall make further investigation as necessary.
89 35 The liquidator may compound, compromise, or in any other
90 1 manner negotiate the amount for which claims will be
90 2 recommended to the court except where the liquidator is
90 3 required by law to accept claims as settled by a person or
90 4 organization. Unresolved disputes shall be determined under
90 5 subsection 15. As soon as practicable, the liquidator shall
90 6 present to the court a report of the claims against the
90 7 cemetery corporation with the liquidator's recommendations.
90 8 The report shall include the name and address of each claimant
90 9 and the amount of the claim finally recommended.

90 10 b. The court may approve, disapprove, or modify the report
90 11 on claims by the liquidator. Reports not modified by the
90 12 court within sixty days following submission by the liquidator
90 13 shall be treated by the liquidator as allowed claims, subject
90 14 to later modification or to rulings made by the court pursuant
90 15 to subsection 15. A claim under a policy of insurance shall
90 16 not be allowed for an amount in excess of the applicable

90 17 policy limits.
90 18 20. DISTRIBUTION OF ASSETS. Under the direction of the
90 19 court, the liquidator shall pay distributions in a manner that
90 20 will ensure the proper recognition of priorities and a
90 21 reasonable balance between the expeditious completion of the
90 22 liquidation and the protection of unliquidated and
90 23 undetermined claims, including third-party claims.
90 24 Distribution of assets in kind may be made at valuations set
90 25 by agreement between the liquidator and the creditor and
90 26 approved by the court.

90 27 21. UNCLAIMED AND WITHHELD FUNDS.
90 28 a. Unclaimed funds subject to distribution remaining in
90 29 the liquidator's hands when the liquidator is ready to apply
90 30 to the court for discharge, including the amount distributable
90 31 to a creditor, owner, or other person who is unknown or cannot
90 32 be found, shall be deposited with the treasurer of state, and
90 33 shall be paid without interest, except as provided in
90 34 subsection 18, to the person entitled or to the person's legal
90 35 representative upon proof satisfactory to the treasurer of
91 1 state of the right to the funds. Any amount on deposit not
91 2 claimed within six years from the discharge of the liquidator
91 3 is deemed to have been abandoned and shall become the property
91 4 of the state without formal escheat proceedings and be
91 5 transferred to the insurance division's cemetery fund.

91 6 b. Funds withheld under subsection 14 and not distributed
91 7 shall upon discharge of the liquidator be deposited with the
91 8 treasurer of state and paid pursuant to subsection 18. Sums
91 9 remaining which under subsection 18 would revert to the
91 10 undistributed assets of the cemetery corporation shall be
91 11 transferred to the insurance division's cemetery fund and
91 12 become the property of the state as provided under paragraph
91 13 "a", unless the commissioner in the commissioner's discretion
91 14 petitions the court to reopen the liquidation pursuant to
91 15 subsection 23.

91 16 c. Notwithstanding any other provision of this chapter,
91 17 funds as identified in paragraph "a", with the approval of the
91 18 court, shall be made available to the commissioner for use in
91 19 the detection and prevention of future insolvencies. The
91 20 commissioner shall hold these funds in the insurance
91 21 division's cemetery fund and shall pay without interest,
91 22 except as provided in subsection 18, to the person entitled to
91 23 the funds or to the person's legal representative upon proof
91 24 satisfactory to the commissioner of the person's right to the
91 25 funds. The funds shall be held by the commissioner for a
91 26 period of two years at which time the rights and duties to the
91 27 unclaimed funds shall vest in the commissioner.

91 28 22. TERMINATION OF PROCEEDINGS.
91 29 a. When all assets justifying the expense of collection
91 30 and distribution have been collected and distributed under
91 31 this chapter, the liquidator shall apply to the court for
91 32 discharge. The court may grant the discharge and make any
91 33 other orders, including an order to transfer remaining funds
91 34 that are uneconomical to distribute, as appropriate.

91 35 b. Any other person may apply to the court at any time for
92 1 an order under paragraph "a". If the application is denied,
92 2 the applicant shall pay the costs and expenses of the
92 3 liquidator in resisting the application, including a
92 4 reasonable attorney fee.

92 5 23. REOPENING LIQUIDATION. At any time after the
92 6 liquidation proceeding has been terminated and the liquidator
92 7 discharged, the commissioner or other interested party may
92 8 petition the court to reopen the proceedings for good cause,
92 9 including the discovery of additional assets. The court shall
92 10 order the proceeding reopened if it is satisfied that there is
92 11 justification for the reopening.

92 12 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
92 13 LIQUIDATION. If it appears to the commissioner that the
92 14 records of a cemetery corporation in the process of
92 15 liquidation or completely liquidated are no longer useful, the
92 16 commissioner may recommend to the court and the court shall
92 17 direct what records shall be retained for future reference and
92 18 what records shall be destroyed.

92 19 25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The court may
92 20 order audits to be made of the books of the commissioner
92 21 relating to a liquidation established under this chapter, and
92 22 a report of each audit shall be filed with the commissioner
92 23 and with the court. The books, records, and other documents
92 24 of the liquidation shall be made available to the auditor at
92 25 any time without notice. The expense of an audit shall be
92 26 considered a cost of administration of the liquidation.

92 27 26. APPLICABILITY. This section shall not apply to a

92 28 religious cemetery or a cemetery owned or operated by a
92 29 governmental subdivision of this state.
92 30 Sec. 82. NEW SECTION. 523I.1413 INSURANCE DIVISION'S
92 31 CEMETERY FUND.
92 32 A special revenue fund in the state treasury, to be known
92 33 as the insurance division's cemetery fund, is created under
92 34 the authority of the commissioner of insurance. The
92 35 commissioner shall allocate annually from the fees paid
93 1 pursuant to section 523I.1211, four dollars for each sale of
93 2 interment rights reported by a cemetery corporation on the
93 3 cemetery corporation's annual report, for deposit to the
93 4 insurance division's cemetery fund. The commissioner shall
93 5 also deposit four dollars into the insurance division's
93 6 cemetery fund for each care assessment submitted, as provided
93 7 in section 523I.815. The moneys in the cemetery fund shall be
93 8 retained in the fund. The moneys are appropriated and,
93 9 subject to authorization by the commissioner, shall be used to
93 10 pay auditors, audit expenses, investigative expenses, the
93 11 expenses of mediation ordered by the commissioner, consumer
93 12 education expenses, the expenses of a toll-free telephone line
93 13 for consumer complaints, and the expenses of receiverships
93 14 established under section 523I.1411. The commissioner shall
93 15 not make an annual allocation to the cemetery fund if the
93 16 current balance of the fund exceeds two hundred thousand
93 17 dollars.
93 18 Sec. 83. NEW SECTION. 523I.1414 VIOLATIONS OF LAW ==
93 19 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.
93 20 If the commissioner discovers a violation of a provision of
93 21 this chapter or any other state law or rule concerning the
93 22 disposal or transportation of human remains, the commissioner
93 23 shall forward all evidence in the possession of the
93 24 commissioner concerning such a violation to the department of
93 25 public health for such proceedings as the department of public
93 26 health deems appropriate.
93 27 Sec. 84. Sections 359.37, 359.40, and 359.41, Code 2003,
93 28 are repealed.
93 29 Sec. 85. Chapters 523I, 566 and 566A, Code 2003, are
93 30 repealed.
93 31 HF 633
93 32 av/es/25